



Transparency and the Public Trust

Report of the Collingwood Judicial Inquiry

VOLUME III

Associate Chief Justice Frank N. Marrocco

COMMISSIONER

VOLUME I

Executive Summary and Recommendations

VOLUME II

Part One – Inside the Collus Share Sale

VOLUME III

**Part Two – The Arena and the Pool:
The Real Cost of Sole Sourcing**

VOLUME IV

Recommendations and Inquiry Process

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This Report consists of four volumes:

- I *Executive Summary and Recommendations*
- II *Part One – Inside the Collus Share Sale*
- III *Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing*
- IV *Recommendations and Inquiry Process*

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VOLUME IV

Recommendations and Inquiry Process

Part Two – The Arena and the Pool: The Real Cost of Sole Sourcing

When the process is not transparent, when the facts have been spun, courses of action can be fairly questioned. Public trust in the integrity of the Town's decision making is easy to lose. When public trust is lost, the road back can be long and hard.

Collingwood's Need for Recreational Facilities

Part Two of the Inquiry examined the circumstances surrounding the construction of two recreational facilities in Collingwood in 2012 and 2013: an ice arena in Central Park near downtown and a cover for the outdoor pool at Heritage Park in the west end of the Town. The Town selected an atypical construction material for the exterior of both facilities: a fabric membrane stretched across aluminum arches. They are often referred to as the Sprung structures for the company that supplied the materials, Sprung Instant Structures Ltd. The Town used the proceeds from the Collus Power Corporation share transaction to pay for a substantial portion of these facilities.*

This chapter provides an overview of Collingwood's existing arena and pool facilities at the beginning of 2012 and the Town's earlier attempts to expand those facilities. It also describes the Town's purchasing bylaw and staff's confusion about who was responsible for ensuring compliance with it.

This background sets the stage for what transpired between early May and late August 2012. As I discuss in the following chapters, during these four months Council turned away from an approved plan to pursue one large multi-use facility and, instead, voted to sole source the pool and arena facilities.

Overview of Water and Ice Facilities

At the beginning of 2012, the Town of Collingwood had insufficient arena and pool facilities to meet the community's needs.

* The two facilities cost \$13,906,886.17 in total. The Town applied \$10,081,989 of the Collus Funds to that amount.

The Town had only one indoor municipal arena: the Eddie Bush Memorial Arena, a historic facility attached to the Town hall. It also had an outdoor arena at Central Park, a large public park close to Collingwood's downtown. The outdoor arena, however, could be used for only a few months, during the winter.

Collingwood also had only one indoor pool, owned and operated by the Simcoe / Muskoka YMCA. This indoor pool was in Central Park, on land the YMCA leased from the Town. The Town operated an outdoor pool at Heritage Park. Volunteers built the outdoor pool in 1967 to commemorate Canada's Centennial. A 2003 feasibility study concluded that the outdoor pool had operational problems and was of little appeal to the general public. The same review concluded that the YMCA pool was not an appropriate size to meet the Town's needs.

Previous Efforts

Many witnesses at the Inquiry testified that, in 2012, there was public demand for new recreational facilities, in particular "water and ice" – a common shorthand for describing pool and arena facilities.

This demand was not new. Throughout the 2000s, Council and staff investigated and assessed how to build and fund new recreational facilities, but without success.

One effort in particular was the subject of some questioning at the Inquiry's hearings.

In 2003, Council retained architectural consultants to complete a feasibility study into building a multi-use recreational facility (MURF) in Collingwood. The study confirmed, among other things, that the Town needed additional facilities, particularly for swimming and skating. It estimated that a multi-use facility which included an ice pad, three types of pools (lap swimming, warm-water therapy, and leisure shallow-water swimming) and other recreational amenities would cost approximately \$18.86 million. The study also found that residents supported a MURF. Funding the construction was a primary concern.

After the architectural consultants presented their report, Council passed a motion on October 16, 2003, recommending that the incoming Council finance a multi-use recreational facility from the following sources:

\$3.3 million from land sales, \$2 million from debt financing, and \$2.54 million from a grant program called “Super Build.” Council also recommended that the incoming Council build the facility at one of four potential locations, among them a property on the Tenth Line next to Fisher Field, a 25-acre park with soccer fields.

On February 5, 2004, the new Council discussed whether to proceed with an application for Super Build funding to construct a multi-use facility. Initially, following some debate about the new facility’s location, Council voted against proceeding with an application. Later, at the same meeting, it reversed its decision. After learning that, by not proceeding with the application the Town would lose grant funding for the library, Council voted in favour of pursuing an application to build on Fisher Field.

Less than three weeks later, on February 23, 2004, Council voted to reverse its decision to construct a multi-use facility at Fisher Field, effectively turning down the Super Build grant funding that the Town would otherwise have qualified to receive.

During the questioning of several witnesses at the Inquiry, Paul Bonwick raised Council’s change of direction when it came to the Fisher Field multi-use facility as an example of how, in the two decades before 2012, Council had unsuccessfully tried different processes to address Collingwood’s recreational needs. Mr. Bonwick also suggested in his examination of Clerk Sara Almas that the fact that Council had been unable to “deliver” in the past justified the expedited process for the construction of the two fabric recreational facilities that are the subject of Part Two of this Report. Mr. Bonwick made a similar suggestion in his closing submissions. The reasons previous councils did not construct new recreational facilities fall outside the scope of this Inquiry. As a general matter, however, I reject any suggestion that earlier councils’ decisions justify or excuse the problems with the procurement of the two fabric buildings that I discuss throughout Part Two.

Overview of the Parks, Recreation and Culture Department

The Department of Leisure Services historically managed the Town’s recreational services and facilities. On May 17, 2010, Marta Proctor was

appointed director of that department, beginning her term in or about September of that year. Ms. Proctor reported to the chief administrative officer (CAO).

Ms. Proctor had more than two decades of experience in recreational programming. She began her career at the Regional Municipality of York and then became an area supervisor for the City of Toronto, where she managed four pools, two arenas, and a variety of community recreational spaces. Ms. Proctor moved to Collingwood in 2010 after four years as director of parks for the Halton Region Conservation Authority, where she had been involved in several infrastructure projects.

By January 24, 2011, the Department of Leisure Services had become the Department of Parks, Recreation and Culture.

Creation of the PRCAC

On March 7, 2011, Council established a Parks, Recreation and Culture Advisory Committee (PRCAC) with the stated mission of providing “recommendations on the development of policies and programs in the area of parks, recreation and culture, in accordance with approved corporate strategic objectives.” Penny Skelton served as the chair of the committee. In 2011 and 2012, when the Town began exploring the construction of a new multi-use recreational facility in Central Park, Ms. Skelton sat on the volunteer Steering Committee tasked with developing proposals for the facility. She provided input and acted as a line of communication between the committee and the PRCAC.

Town Commitments to the YMCA of Simcoe / Muskoka

In 2003 Collingwood Town Council identified the YMCA as a potential partner for the operation of a new recreational facility. In 2008 it set aside \$1.5 million for the expansion of the YMCA’s Collingwood pool facility, maintaining that commitment until 2011. In the spring of 2011, the Town began discussing partnering with the YMCA on the construction and management of a multi-use recreational facility in Central Park.

Purchasing Bylaw and Unsolicited Proposals Guideline

During the 2010–14 Council term, all purchases by the Town were subject to bylaw 2006-42, a “By-Law to Provide for the Purchase of Goods and Services” (the “Purchasing By-Law”), which provided that

- a. Department Heads shall ensure that all provisions of the by-law are complied with (2.1(c));
- b. Purchases over \$50,000 shall be obtained by tender (3.1);
- c. Purchases over \$25,000 must be approved by Council as evidenced by the passing of a resolution or by-law (4.3);
- d. Certain circumstances may arise where competitive tendering is undesirable, including where there is only one known source for particular goods or services (called “sole source”), provided that such measures are not taken for the purpose of avoiding competition, discriminating against any Supplier or circumventing any requirement of the Purchasing By-Law (6.7); and
- e. Where an unsolicited proposal is received, the Town shall follow the procedure described in the Town’s “Unsolicited Proposals Guideline” (2.1(d)).

In 2012, the Town also had an unsolicited proposals guideline, which prescribed a process for how staff and Council should handle situations where the seller of a product or service approaches the Town, on its own initiative, with a proposal. The guideline stated that the Town welcomed unsolicited proposals from the private sector, but

Where an unsolicited proposal is accepted and the proposed solution implemented, the process must be fair and be seen to have been fair, by taxpayers and by the supplier community. Similarly, where an unsolicited proposal is not accepted, either because it was ultimately ruled out for any reason or it failed to generate any interest, the process followed must have been fair and be seen to have been fair.

This guideline set out a three-step procedure. First, the relevant Town department would review the proposal and decide whether to recommend proceeding with a more detailed consideration. Second, if the department supported a more detailed review, the proposal would then be considered by an ad hoc committee of senior staff, including the CAO. Third, if that committee decided to recommend Council approve the proposal, it would be put forward to Council.

Responsibility for the Bylaw and the Guideline

The purchasing bylaw contemplated that the Town would have a purchasing manager responsible for ensuring the bylaw's policies and procedures were "consistently applied in the corporation" and serving as "a resource to Departments in support of the purchasing function." If there was no purchasing manager, the bylaw provided that the relevant department head for each purchase was the deemed the purchasing manager.

In 2012, the Town did not have a purchasing manager on its organizational chart but did have a manager of fleet, facilities and purchasing. Dave McNalty, who held this position in 2012, testified that he served the function of purchasing manager for the purposes of the purchasing bylaw. He also stated that his role included assisting the Town's departments with procurements. The assistance Mr. McNalty provided varied by project, but generally it included drafting project scope documents; editing, posting, and advertising tendering documents; opening bid processes; and evaluating bids.

Mr. McNalty began his career as a draftsman for a starch plant in Collingwood. He was eventually promoted to engineering and maintenance manager and, later, plant manager. In these roles, Mr. McNalty oversaw several significant construction procurement processes. In 2009, he left the plant and joined the Town as manager of fleet, facilities and purchasing. He initially reported to the executive director of public works, Ed Houghton. When Kim Wingrove became chief administrative officer, Mr. McNalty began reporting to the CAO. Before working for the Town, Mr. McNalty had no experience in the design or construction of recreational facilities.

There was some confusion at the Inquiry about which staff members were responsible for ensuring compliance with the purchasing bylaw in 2012.

Mr. McNalty testified that, although he fulfilled the functions of purchasing manager contemplated by the purchasing bylaw, the department heads were jointly responsible for ensuring compliance when their departments procured the goods or services in question. He also noted that the CAO had the “ultimate responsibility” for the bylaw.

Mr. McNalty testified that, beyond department heads and the CAO, the treasurer had an interest in ensuring the bylaw was followed because it “fell under” the Treasury Department. Mr. McNalty said that, when he had a question about the bylaw, he asked the treasurer. Ms. Proctor testified that she did the same.

Clerk Sara Almas testified that the treasurer was responsible for ensuring compliance with the purchasing bylaw generally, but later noted that the “waters got a little muddy” because Mr. McNalty, who was responsible for overseeing individual procurements with the relevant department head, did not report to the treasurer.

Marjory Leonard was the Town’s treasurer in 2012. A certified professional accountant and certified financial planner, she had worked at a chartered accounting firm for more than 27 years before becoming treasurer in 2005. As treasurer, she was responsible for maintaining the financial integrity of the Town and overseeing the budget process.

In her testimony, Ms. Leonard said she believed Mr. McNalty was responsible for overseeing compliance with the purchasing bylaw because that is what the bylaw stated. She explained she did play a role in monitoring procurements, but said this task took place only after the purchase was mostly complete and she needed to sign the cheque. As an example, Ms. Leonard noted that she would ensure the purchase monies were assigned to appropriate departmental budgets. She also pointed out, though, that a department head was not required to submit purchases to her for approval before they took place.

The Town treasurer’s formal job description stated that the treasurer’s duties and responsibilities included overseeing “the development and administration of the corporate purchasing function” and “monitoring the implementation and administration of purchasing policies.” When asked about this description, Ms. Leonard testified that fulfilling these roles was largely out of her hands because the Town’s purchasing manager did not

report to her, and her oversight role was limited to reviewing purchases after they had largely been finalized.

Training on the Bylaw

Almost all the Town councillors and staff who testified at the Inquiry did not receive any formal training on the purchasing bylaw or unsolicited proposals guideline. Mr. McNalty testified that he received a copy of the bylaw when he first began working for the Town and, while he did not receive formal training, he likely had “discussions” about the bylaw and the guideline.

Similarly, Ms. Proctor testified that she did not receive specific training on the bylaw, but that she was “oriented” toward the Town’s policy and procedures. Ms. Proctor also stated that she would have asked about the applicable procurement bylaw “by nature.”

Although he supervised Mr. McNalty, Mr. Houghton did not receive any training on the bylaw either. When asked whether he was aware of the bylaw before Council appointed him acting CAO in April 2012, Mr. Houghton responded, “Probably on the periphery.”

Mayor Sandra Cooper and Deputy Mayor Rick Lloyd both testified that they received no formal training on the purchasing bylaw. As well, Mr. Lloyd stated that his role as the Town’s chair of finance (see Part One, Chapter 1) did not include any responsibility to administer the purchasing bylaw. Concerning the unsolicited proposals guideline, Mayor Cooper testified she did not receive training on its contents, but would involve staff when approached with an unsolicited proposal. Deputy Mayor Lloyd testified he was not familiar with the guideline and could not recall if he knew it existed.

Treasurer Leonard, in contrast, testified that she effectively received training on the bylaw because she was involved in its creation. However, she did not recall receiving specific training about when it was appropriate for the Town to proceed by sole-source procurement.

Council's Consideration of Recreational Facilities

The 2010–14 Collingwood Council first focused on Central Park as it tried to address the Town's long-acknowledged need for additional recreational facilities. It established a Steering Committee to examine the design, cost, and funding for a multi-use recreational facility in the park – a complex that incorporated existing amenities such as the YMCA pool and the Town curling club.

As the Steering Committee deliberated and worked on its report and recommendations, private companies, including Sprung Instant Structures Ltd., made overtures to the Town about its potential development in the park. Shortly after the Steering Committee delivered its final report, Council terminated the employment of Chief Administrative Officer (CAO) Kim Wingrove and replaced her with Ed Houghton as acting CAO. Mr. Houghton viewed his position differently from other CAOs and appointed a new administrative entity, the Executive Management Committee, to assist him in his new role.

The Central Park Steering Committee

In 2011, the YMCA was already planning an expansion and renovation of its facility in Central Park. On March 28, 2011, Marta Proctor, the Town's director of parks and recreation, and Tom Coon, chief executive officer (CEO) of the Simcoe-Grey YMCA, made a joint presentation to Council proposing that the Town and the YMCA partner to redevelop Central Park and create a new multi-use recreational facility there. The proposal contemplated an expansion of the YMCA's pool and the addition of an ice pad.

After the presentation, Council unanimously endorsed the partnership and directed staff to investigate design, costs, and funding options, including government and alternative funding, and to facilitate community consultation. Staff were asked to report back to Council in eight weeks.

Meanwhile, on May 2, Council also established a volunteer Steering Committee to investigate the redevelopment of Central Park. It had eight members – three from the YMCA and five representing the Town.* They were all selected through a public volunteer application process that considered their communication and facilitation skills, experience in the design and construction of major capital projects, success in obtaining public and private funding, and understanding of Collingwood’s recreational infrastructure requirements.

The committee’s work was guided by terms of reference and followed a detailed work plan, both of which were provided to Council. In addition, the committee established a community and stakeholder consultation program, a communications plan, and a memorandum of understanding between the Town and the YMCA which outlined shared operational values to guide the development and operation of the multi-use facility. Council did not provide the Steering Committee with a budget or any other parameters for its work. However, in August 2011, in an email to Mayor Sandra Cooper and Ms. Wingrove, Councillor Keith Hull raised the need for Council to consider the recreational facility costs “sooner than [*sic*] later.”

Over the next 10 months, until March 2012, the Steering Committee held regular meetings and consulted with the public through an online blog and survey, newspaper advertisements, and stakeholder interviews. It maintained detailed minutes of its meetings, and Town staff provided five public updates to Council, reporting on the committee’s progress, providing recommended options for the project’s next steps, and obtaining Council’s directions on its work.

Ms. Proctor assisted the committee, testifying that she acted as the liaison and facilitator between its members and Town staff. Robert Voigt, the Town’s

* The YMCA representatives were Rob Armstrong, Tom Coon, and David Grass. The Collingwood representatives were Brian Saunderson, former mayor Terry Geddes, Claire Tucker-Reid, Dr. Don Paul, and Dr. Geoff Moran.

manager, planning and infrastructure projects, also attended the committee meetings. Other members of Town staff provided input and assistance where required, including Dave McNalty, the manager, fleet, facilities and purchasing, and Ron Martin, the deputy chief building official.

The committee also benefited from professional advice and assistance. On June 27, Council approved the retainer of an architectural firm to develop and cost preliminary design options for the multi-use recreational facility. Following Council's directions, the Town issued a request for proposal (RFP) on July 28 for "a professional design team led by an architect" along with a landscape architect, structural engineer, electrical engineer, civil engineer, and mechanical engineer. The RFP set out the goals for the project, presented a detailed description of the "absolute minimum" desired design elements, and listed background information and resources available to the successful proponent such as Town plans, applicable bylaws, the Town's urban design manual, utility services information, and stakeholder interview findings. The RFP also stated that assistance would be available from Town staff, the Town's Heritage and Parks, Recreation and Culture Advisory committees, and YMCA staff. At the end of the RFP process, Council accepted the Town staff's recommendation to retain WGD Architects Inc. – a Toronto group specializing in the design of leisure and hospitality buildings – as the successful respondent.

The Preferred Design for the Multi-Use Facility

On September 13, 2011 WGD provided the committee with six preliminary design options for a multi-use facility. At the committee meeting on September 19, Mr. Voigt gave feedback on each design and committee members made their choice.

The preferred design included a twin-pad arena and a new six-lane 25 metre pool with deck space for competitions. It converted the existing pool for therapeutic use. In addition, it contemplated the repair and integration of the current curling rink and common areas for "community centre" use. WGD analyzed the selected option and, on November 10, provided a more detailed report that estimated the cost of constructing the multi-use recreational facility and related park development at \$35,251,965.11.

The Committee's Final Report

The Steering Committee issued a final, 66-page report dated March 5, 2012. The report set out a “cohesive strategy [consisting] of a Recommended Development Scenario, management partnership framework, and financing options” to address the Town’s need for pool and arena facilities. It also included a detailed description of the Steering Committee’s public consultations and the business case for the development. In addition, it outlined the stages of the committee’s work, which included the following:

Review and Analysis

The Committee reviewed current policy direction, demographic projections, recreational trends and demand assessment reports in order to define service area, and articulate gaps in service provision. Three development scenarios were drafted to determine design options and site characteristics and, refine the terms of reference for the design firm.

Design and Funding

The Committee procured a design firm to develop conceptual feasibility drawings and scenarios for the site in response to an RFP. Subsequent meetings centered on the needs of the community[,] resulting in a recommended conceptual design. Potential capital funding streams were researched.

Verifying Priorities

The Committee integrated public and stakeholder consultation throughout the project in order to provide timely updates to the community and measure demand for recreation facilities in Collingwood. Stakeholders and the community were engaged in discussions regarding service models, design scenario, partnerships opportunities and preferred phasing.

Final Recommendations

The Committee developed a facility recommendation for how to best respond to the highest priority needs. An operational model and

partnership framework between the Town and the YMCA was developed with capital budget implications and a five-year operational budget.

The report projected capital construction costs of approximately \$35 million. That estimate included construction of the multi-use recreational facility and “works necessary to relocate the displaced ball diamond and repair deteriorating curing rink walls,” along with a 10 percent allowance “to account for design and pricing unknowns” and a “higher than average” 20 percent contingency. It also reproduced design and pricing information that WGD had prepared.

According to the report, sharing the maintenance and operation of the facility with the YMCA would provide overall cost savings. “The Recommended Development Scenario with a twin pad arena integrated with the new pool facility will,” it predicted, “be less costly to run and maintain than options where the aging facility of Eddie Bush Arena maintains its use.”

The report also set out a series of recommendations, including that Council authorize staff to investigate funding options. It also recommended Council develop a joint-venture agreement with the YMCA which outlined an operating model and established key roles and responsibilities.

Staff Presentation to Council

Town staff incorporated the Steering Committee’s final report into a staff report, which Ms. Proctor presented to Council on March 5, 2012. The committee co-chairs, Brian Saunderson and Clair Tucker-Reid, also attended the meeting to respond to questions from Council.

The staff report made three recommendations. Council should endorse the recommended Central Park redevelopment scenario; approve the development of a funding strategy, with recommendations to be presented within six months; and authorize staff to develop actions and timelines for all other recommendations outlined in the Steering Committee’s final report and to present them to Council within six months. The staff report also summarized the Steering Committee’s recommendations for further development of the project:

- Complete the development of design in preparation for site development
- Continue to assess community recreation program needs and respond to service gaps
- Establish a process to consider repurposing options for the Eddie Bush Facility
- Establishes [*sic*] a reserve funding mechanism to adequately maintain facilities through a capital asset management program
- Explore potential public private opportunities to attract investment capital for the Central Park Project by leveraging existing municipally owned assets
- Develop and launch in cooperation with the Simcoe-Muskoka YMCA, a capital fundraising campaign for the Central Park Project
- Develop a Joint Venture Agreement with the Simcoe-Muskoka YMCA that outlines an operating model and roles and responsibilities
- Develop a plan for relocating the existing ball diamonds based on feedback from slo-pitch and minor ball representatives

The staff report discussed the importance of establishing a funding strategy for the redevelopment and identifying potential funding sources, including public-private partnerships, noting that the 2012 budget included funding to develop a funding strategy. Staff sought Council authorization to retain an external consultant to conduct market sounding, a process by which the Town would gauge the interest of potential public-private partners. Staff also sought authorization to work co-operatively with the YMCA on a capital funding campaign.

Finally, the report proposed “a strategy to set a funding formula [to] be completed over the next 6 months[,] at which time comprehensive options will be presented to Council for approval along with an actionable implementation plan.”

Council Response to the Committee's Recommendations

At its March 5 meeting, Council unanimously approved the staff's recommendation that a funding strategy for the multi-use facility be presented in six months. They deferred the other recommendations until the Council planning and development meeting on March 19.

On March 19, Council unanimously endorsed the Steering Committee's recommended Central Park redevelopment scenario "in principle." It also authorized Town staff to develop actions and timelines for the Steering Committee report's other recommendations "to be presented within 6 months."

The Town issued an RFP for "Market Sounding of PPP [public-private partnership] Opportunities" on April 5. The RFP stated that the goal of the market-sounding process was to "identify opportunities to leverage existing municipally owned assets that could generate investment capital or an ongoing revenue stream to assist in funding a \$35 million multi use community recreation project."

Seven companies submitted proposals in response to the RFP. Staff from the Parks, Recreation and Culture, Planning, and Finance departments reviewed the proposals and, based on the firms' skills and relevant experience, identified three for consideration. Of those three, staff recommended awarding the contract, with a maximum fixed price of \$43,474 plus taxes and pre-approved disbursements, to Deloitte & Touche LLP. Staff explained that Deloitte & Touche offered the lowest price and that its proposal "outlined a thorough and comprehensive work plan which clearly [addressed] the requirements outlined in the RFP."

On May 7, staff provided Council with this recommendation and an update on the Central Park redevelopment funding strategy in a staff report. This report included the following proposal:

1. Continue open lines of communication between Council and Public on the status of this project.
2. Establish a new Council approved "Phase 2 Steering Committee" to champion the Community Recreation Centre Project and oversee;

- * Fundraising
 - * Government relations
 - * Future direction of the Eddie Bush Arena
3. Staff complete a comprehensive review of funding sources and options through;
 - * Internal town funding (reserves, sale of assets, development charges etc.)
 - * External funding (infrastructure funding through other levels of government)
 - * Expression of Interest – to solicit construction and partnership options for this project
 - * Other possible town-wide PPP opportunities through market sounding
 4. Staff review and identify options with associated costs to relocate the ball diamonds / displaced infrastructure.
 5. Complete traffic and engineering studies to consider implications / recommendations regarding the surrounding flow of traffic and parking.

At the May 7 Council meeting, Treasurer Marjory Leonard stated that the Town's 2012 budget included \$100,000 to complete a market sounding and business case for the Central Park recreation centre project.

Deputy Mayor Rick Lloyd and Councillor Ian Chadwick both advised other Council members at the meeting that they did not support retaining a professional firm to conduct the recommended market sounding. Mr. Chadwick suggested that staff should do the work. Councillors Keith Hull, Dale West, Michael Edwards, Joe Gardhouse, and Sandy Cunningham, however, indicated that they supported retaining Deloitte & Touche. Council then voted unanimously to create the Phase 2 Steering Committee and, by a split vote, deferred the question of retaining Deloitte & Touche for a week.

The objections from Mr. Lloyd and Mr. Chadwick were an early indication that at least some councillors were reconsidering the viability of proceeding with the multi-use facility proposal.

Following the May 7 Council meeting, the Town solicited applications for volunteers to sit on the Phase 2 Steering Committee. Ultimately, selecting these volunteers was never brought to a Council vote.

Need for a Competitive Tendering Process for Construction

While the Steering Committee and the Council were exploring the possibility of building a new multi-use recreational facility, two private companies requested a meeting with Council to discuss a joint proposal for a new recreational facility. These companies were Ameresco Canada Inc., an energy services company, and Greenland International Consulting Ltd., a landscape architecture firm.

On February 21, 2012, Anthony DaSilva, Ameresco vice-president and chief operating officer, sent a letter to Collingwood Council requesting a meeting to present a proposal for a recreational facility. A timeline of events that Ameresco prepared in June 2013 indicated that Ameresco had already met with Town representatives on two occasions before sending the February 21 letter.

After Council approved the Steering Committee report in principle, Councillor West emailed Mayor Cooper, Deputy Mayor Lloyd, and CAO Wingrove, asking that Ameresco be contacted to set a meeting regarding a potential recreational facility. Mr. Lloyd responded that important procurement-related issues needed to be considered before such a meeting took place. He stated that a request for quotation (RFQ) process should be put in place before any meeting with Ameresco:

[M]eeting with Amereso [sic] could put them and the Municipality in conflict as we will have received all their information then go out publicly for RFQs. This could be very unfair to Ameresco and maybe a potential liability to the town if it appears that we shop their idea specially if another firm puts forth a similar proposal and we select another firm. That is why months ago that I wanted to go RFQ. We need to do this right.

Mr. West replied that a high-level meeting with Ameresco, in which the Town did not go into “heavy details” but indicated it might be interested in Ameresco’s services, could be appropriate. Mr. Lloyd agreed.

When asked to elaborate on this email at the Inquiry, Mr. Lloyd stated he was concerned that, if the Town were to proceed with a competitive

procurement process, Ameresco, in contrast to other prospective bidders, would have had an unfair advantage to promote itself to the Town. This evidence demonstrates that Mr. Lloyd had a sophisticated understanding of how to conduct a fair RFP process and why it is important to do so.

Ms. Wingrove expressed similar concerns regarding Ameresco the following week, on March 13, 2012, when she sent an email asking the mayor's executive assistant to arrange a meeting between Ameresco and Mayor Cooper, Ms. Proctor, Councillor West, and herself. When Councillor West received the invitation to the meeting, he proposed that Councillor Hull and Deputy Mayor Lloyd also be invited. Ms. Wingrove responded, stating:

I wondered who would be best to include at this stage. My only concern is with prejudicing a potential procurement. I want to keep this very clean and fair. If we have significant meetings with a particular proponent, who ends up being successful in an RFP, and someone should object – it might be difficult to claim that we were entirely impartial in our decision making. If you want to have a larger group, we can make that happen if we are careful about the agenda and taking good notes.

Before the meeting could be arranged, on April 2, Council voted to terminate Ms. Wingrove's employment with the Town of Collingwood (see Part One, Chapter 9). On April 17, Ameresco and Greenland met with Town representatives, including Ms. Cooper, Mr. Lloyd, Mr. West, Mr. Hull, and the newly appointed acting CAO, Ed Houghton (see below). Ms. Cooper stated in her evidence that no one prepared an agenda for the meeting, and no one took notes.

Ameresco first gave a slide presentation outlining the Town's history of unsuccessful recreational facility projects, describing the key elements in a proposed recreational facility, and discussing different construction and funding options available to the Town, including public-private partnerships. Mark Palmer, Greenland's president and CEO, also spoke at the meeting. Among other things, he stated that Ameresco and Greenland could help expedite the current process so that a "bricks and mortar" project could be completed in the next two years and at a much lower cost. "The Ameresco

Team understands that a path forward after the meeting today and involving any Public-Private Partnership for the Collingwood MURF [multi-use recreational facility] must," he said, "be completely open and transparent."

At the Inquiry hearings, Mr. Houghton testified he did not think there was anything improper about the meeting with Ameresco and Greenland. The companies were simply introducing their product to Town representatives. Ms. Proctor, however, testified that the Town should not have been meeting with Ameresco at this stage. She said the Town was not at a point where it should have been engaging with potential vendors.

Ed Houghton Appointed as Acting Chief Administrative Officer

As I describe above, a sudden switch in CAO for the Town of Collingwood occurred just as Council began to pursue the proposal put forward by the Central Park Steering Committee (see Part One, Chapter 9). In the weeks leading up to the termination of Ms. Wingrove's employment, Deputy Mayor Rick Lloyd sent Mayor Sandra Cooper and his friend, Paul Bonwick, emails expressing frustration with Ms. Wingrove. Hours before the meeting at which Ms. Wingrove was dismissed, Ms. Cooper and Mr. Lloyd called Mr. Houghton and offered him the position of CAO. Initially, he declined.

Over the next week, Ms. Cooper, Mr. Lloyd, and Mr. Bonwick worked in tandem to convince Mr. Houghton to take on the position of CAO, in addition to his many other responsibilities. Once Mr. Houghton agreed to become CAO, Ms. Cooper and Mr. Lloyd consulted with Mr. Bonwick about the process through which Mr. Houghton should be hired. They also consulted with him on the media communications announcing both the departure of Ms. Wingrove and the appointment of Mr. Houghton as her replacement (see Part One, Chapter 9).

Mr. Houghton's View of His Role as CAO

Mr. Houghton testified that he agreed to become Collingwood's CAO on three conditions: he did not want to be blamed for the departure of Ms. Wingrove; he wished to be designated "acting" CAO to indicate he was serving as CAO only until the Town could find a replacement; and he did not want to receive any compensation for this additional role.

When asked whether he felt he had the skills and experience necessary for the position, Mr. Houghton responded that he had the skills and experience to serve as CAO for only a short period before the appointment of a new CAO. He also indicated that he did not think about whether he was qualified to serve as CAO because he never planned on serving as CAO. He further stated in his evidence:

I didn't have ... all the ins and outs of ... municipal work at all, because even though I ... did public works, I was not involved with Town Hall. So I don't ... I didn't have the any of the ... education from a municipal perspective, those ... things.

Mr. Houghton testified he did not review the Town's official CAO job description before or during his tenure as CAO. He said he believed his responsibilities as the acting CAO were different from the traditional duties of a CAO. Specifically, he believed he would not get involved in staff discipline or making any changes "from an operational perspective." He testified he did not explain his limited view of his role as CAO to anyone at the Town.

Mr. Houghton also noted that he did not seek or receive any education or training on how to carry out his role as CAO. Mr. Lloyd testified that Council, in turn, did not consider any training for Mr. Houghton:

I think Council was excited to get Mr. Houghton in there in a temporary position to keep things moving. Keep things moving, keep the municipality in a proactive way [*sic*], in a direction that was very positive for the community.

As he had requested, Mr. Houghton was not paid for his work as the Town's CAO, though he noted that, at one point during his tenure, he received

a bonus of between \$20,000 and \$30,000. In his testimony, he agreed that the lack of compensation did not diminish the obligations he owed to the Town as acting CAO.

When providing evidence on his perceptions and understanding of his responsibilities as CAO, Mr. Houghton stressed at several points that, when he first assumed the role of CAO, he thought he would serve in the role for only a few months. This assumption proved to be wrong.

Mr. Houghton served as the Town's acting CAO for about a year. Mr. Lloyd testified that because Council was satisfied with Mr. Houghton's work, it did not search for a permanent replacement for him. However, Mr. Houghton claimed he told Council several times during his tenure that the position was becoming too stressful for him, that he could not serve as acting CAO for much longer, and that Council should begin searching for a new CAO.

The other evidence on this issue was inconsistent. The only documented instance of Mr. Houghton indicating to Council that it should hire a new CAO was on November 5, 2012, when Council and staff faced scrutiny from the public regarding the sudden decision to build two fabric recreational facilities. Town Clerk Sara Almas did not recall Mr. Houghton ever indicating to Council that the CAO position was causing him stress. Mr. Lloyd, in contrast, agreed with suggestions by Mr. Houghton's counsel that Mr. Houghton "from time to time" indicated to Council that he no longer wished to serve as CAO.

During his tenure as acting CAO, Mr. Houghton would oversee, among other projects, the purchase of two recreational facilities for a combined price of \$13,906,886.17.

Formation of the Executive Management Committee

When Mr. Houghton took on the role of Collingwood's acting CAO, he continued to serve as the president and chief executive officer of both the Collus entities and the Town's water utility as well as the Town's executive director of public works and engineering. Mr. Houghton testified that he established an Executive Management Committee (EMC) soon after his appointment to "make sure that nothing fell off the table, to make sure that someone ... who understands the municipal business ... would be able to assist." The

committee consisted of Town Clerk Sara Almas, Town Treasurer Marjory Leonard, and Larry Irwin, the director of information technology for the Collus entities. Although Mr. Irwin worked for Collus, in 2012 he also provided IT services to the Town.

Council was not asked for input on who should serve on the EMC, and it never passed a bylaw or resolution to create the EMC formally. No terms of reference governed its role or how it should operate. In her testimony, Ms. Almas said there was no formal process for appointment to the EMC – Mr. Houghton simply asked her to join the committee. Ms. Leonard stated that her experience was similar. In his testimony, Mr. Houghton acknowledged that the EMC was not formally recognized by Council.

During the time that Collingwood Council deliberated on and eventually approved the construction of a new pool and a new arena, the EMC did not have regularly scheduled meetings. When the committee did meet, no one took formal minutes.

The Inquiry received conflicting testimony about the way the EMC made decisions. Mr. Houghton testified that the committee did so by consensus, explaining that it would not proceed with a decision unless all members agreed. He said that the absence of objection – as opposed to clearly indicated approval of a given decision – also constituted consensus.

Ms. Leonard and Ms. Almas similarly testified that the EMC reached consensus on a “no objection” basis, explaining that consensus was deemed to have occurred when nobody issued an objection. They also indicated that the consensus model was not always followed. Ms. Leonard recalled that regardless of whether the EMC reached consensus, Mr. Houghton held a “final veto” regarding every decision. Ms. Almas testified that there was at least one instance in which an EMC decision went forward without the committee’s consensus.

There was also some confusion among witnesses as to whether the EMC had authority to make decisions that would typically be made by the CAO alone, or whether Mr. Houghton was the sole decision maker, with the committee serving an advisory role.

In his testimony, Mr. Houghton said he did not believe, as acting CAO, that he was ultimately responsible for the decisions made by the EMC. Rather, he felt that the EMC had a shared responsibility for these decisions.

Ms. Leonard testified that the EMC was, for the most part, a committee whose purpose was to advise the acting CAO. However, she noted that certain of Ms. Wingrove's responsibilities were assigned to EMC members.

Ms. Almas told the Inquiry that some of the decisions that were generally the responsibility of the CAO were made by Mr. Houghton. She also noted that Mr. Houghton did not work at Town Hall but, rather, operated out of the Collus PowerStream offices. In instances where one of the CAO's responsibilities needed to be carried out, but Mr. Houghton was not available, the task would generally fall to Ms. Almas or Ms. Leonard. In particular, Ms. Almas noted that, as a result of Mr. Houghton's absence from Town Hall, she became responsible for interacting with the public in instances where the CAO would normally have done so. When she first joined the EMC, she did not expect to be asked to assume so much responsibility, though she was eager to take on the challenge. She did not believe, however, that being a member of the EMC meant that Town staff were required to report to her as though she was the CAO.

Town councillors and staff outside the EMC also seemed confused about whether the EMC exercised the same authority as the CAO. When asked at the hearings whether the EMC could make decisions that would normally be the responsibility of the CAO, Ms. Cooper responded: "Ultimately the acting CAO would ... be able to make that decision. And ... as I understand it ... collectively with [the EMC]." Mr. Lloyd had a positive opinion of the EMC:

I think rather than one person being the CAO looking after it as it is today, he [Mr. Houghton] had a team of people that would consult and come up with ... very positive stuff for ... the municipality to deal with.

Neither Ms. Cooper nor Mr. Lloyd attended the EMC meetings.

Marta Proctor, the director of parks, recreation and culture, indicated that no one explained the EMC's role to staff and that, initially, she did not understand the committee's role. Over time, she learned that the EMC made "key corporate decisions" together, sometimes on its own and sometimes with the assistance of other staff members. She testified that the creation of the EMC made her work for the Town more difficult in two ways. First, given Mr. Houghton's frequent absence from Town Hall, she was compelled to seek

out Ms. Almas or Ms. Leonard when she had questions that, formerly, she would have asked of the CAO. She testified that there was “no clarity or consistency” with regard to the person she should contact when seeking direction from the CAO’s office. Second, Ms. Proctor stated that the EMC “created another layer of decision making”: when the committee relayed instructions to staff, it was not clear whether these directions emanated from Council decisions.

Dave McNalty, Collingwood’s manager of fleet, facilities and purchasing, understood that the EMC was a collaborative group that made decisions by consensus – decisions that would formerly have been the responsibility of the CAO alone. He also stated, however, that in some instances he took direction from individual members of the EMC. He testified that the frequency of his communications with the CAO did not change when Mr. Houghton replaced Ms. Wingrove, and that he continued to meet with the CAO every week or two. If Mr. Houghton was not available to discuss an issue, he would contact Ms. Leonard to discuss financial issues and Ms. Almas for procedural issues.

The Initial Contact from Sprung

Sprung Instant Structures is a Canadian company that supplies fabric membrane structures. Sprung supplied the fabric structures that were used to construct the arena and the pool that are the subject of Part Two of this Report. Tom Lloyd,* a regional sales manager for Sprung, testified that, as of 2012, Sprung structures were primarily used for military, mining, and oil and gas purposes, although recreational facilities were becoming close to 50 percent of the company’s business.

Pat Mills, one of Sprung’s sales representatives, contacted Brian Saunderson, co-chair of the Central Park Steering Committee, on March 27, 2012. He requested an opportunity to discuss the Town’s “needs” for recreational facilities in Central Park. Mr. Saunderson forwarded his email correspondence with Mr. Mills to Ms. Proctor and asked for advice on how to respond. Ms. Proctor suggested that Mr. Saunderson respond that the Central Park project was not yet considering design features.

* Tom Lloyd is not related to Deputy Mayor Rick Lloyd or to Councillor Kevin Lloyd.

On April 13, Mr. Mills also reached out to Mr. Houghton, now acting CAO. He attended Mr. Houghton's office, sent promotional materials via email, and requested a meeting. On April 18, Mr. Houghton invited Ms. Proctor to attend a meeting with Mr. Mills to discuss Sprung buildings. When she responded that she had a scheduling conflict, Mr. Houghton decided to meet with Mr. Mills on his own.

Mr. Houghton testified that, at the time Mr. Mills contacted him, he was unaware that "there was really even that much going on from a recreation facility" point of view because he was focused on the Collus PowerStream transaction (see Part One, Chapter 8). He said he became aware that "there was some activities going on regarding recreation facilities" when he was invited to attend a meeting with Ameresco. Mr. Houghton explained that he had not read the Central Park Steering Committee report and that he met with Sprung in an attempt to fulfill his "due diligence in the sense of finding out what was ... going on."

Mr. Mills and Mr. Houghton met at the Park Hyatt Hotel in Toronto on April 25. Mr. Houghton testified that Mr. Mills "explained the attributes of the Sprung structures" at their meeting. Mr. Mills later followed up with Mr. Houghton, asking for an opportunity to present to the Central Park Steering Committee.

This communication would not be the last that the Town heard from Sprung.

Council's Sudden Change in Direction

On May 8, 2012, the day after Council voted unanimously to create a Phase 2 Steering Committee, some councillors began to question the financial feasibility of the Central Park Steering Committee's recommended multi-use recreational facility. In response, Mayor Sandra Cooper instructed staff to organize a strategic planning workshop for Council. At the workshop – essentially a Council brainstorming session – councillors continued to express concern about the cost of the proposed recreational facility and raised numerous alternatives. Council did not, however, determine a budget or select a direction.

Steering Committee Recommendations Questioned

In the days after the May 7 Council meeting, councillors began exchanging emails questioning the Steering Committee's recommendation to hire Deloitte & Touche to conduct market sounding for a public-private partnership. They also questioned the general viability of the Steering Committee's proposed recreational facility.

On May 8, Councillor Kevin Lloyd started the exchange with an email to Council and Marta Proctor, director of parks, recreation and culture, suggesting that the Town delay hiring Deloitte & Touche until the Phase 2 Steering Committee reported back on funding options. Councillor Lloyd noted that the Phase 2 Steering Committee “might deem the process of little value.” He also urged the creation of a “back up scenario” in which a recreational facility would be constructed in phases over a number of years. He concluded his email,

I hate to be the one who rains on anyone's parade, however, we must be pragmatic. I believe this project will not fly at a price tag of 35 million (today). We can get what the public wants now and complete the vision over time. We don't want to come out of this with nothing but bills and no bricks and mortar. It's time to pinch ourselves, and face the facts.

Ms. Proctor responded to Councillor Lloyd's email:

I would like to respectfully mention that the recommendations you propose below would be outside the current Council approved mandate and would require a new feasibility study. We could certainly consider this option should that be the decision and direction of Council versus responding to the recommendations and directions presented in Central Park Steering Committee's final report.

Ms. Proctor testified that the May 8 email from Councillor Kevin Lloyd was one of several messages she received at this time asking that something other than the Steering Committee's recommendation be pursued. Ms. Proctor testified that these messages left her wanting clear direction from Council:

The CAO was let go. There was no clarity or consistency in who I could speak to on direction. There seemed to be multiple messages coming about what we're doing next and how we're to do it without a defined course of action. And I was trying to understand where these messages were coming from and how we bring them in front of council to set clear direction and policy for staff to follow.

Deputy Mayor Rick Lloyd testified that Kevin Lloyd's email was one of the first in a series of communications that led councillors to question proceeding with a multi-use recreational facility. Ms. Proctor also testified that around this time councillors began to suggest that the facility might be too costly.

On May 13, Mayor Cooper sent an email to Ed Houghton, Kevin Lloyd, Sara Almas, and Marta Proctor, stating:

Just a heads up I am hearing from some members of council making comment to the deferred motion of Central Park. It may be that this deferred motion continue to be deferred for approx one month ...
I would like a workshop of council within the timeframe being suggested.
(30 days)

Mr. Houghton responded that the mayor's suggestion was a "great idea" and that "Spending time with Council finding out exactly their thoughts will be beneficial." Ms. Proctor sent a separate email to Mr. Houghton agreeing that it was the best way to approach the project.

Mayor Cooper testified that she asked for a workshop because there "were emails flying around" and members of Council "were hearing from the public" about recreational facilities. She believed that, despite the work done by the Steering Committee reviewing options for recreational facilities, it would be best for Council to "come together and give their ideas, give their suggestions, give their views."

In May 2012, Mr. Houghton testified, some councillors were becoming less enamoured with the facility proposed by the Steering Committee and had expressed these feelings to the mayor. He felt that Council was "starting to really fracture" and that it was a good idea for the mayor to request the workshop so Council could determine a way forward. He also testified that it was around this time that he first read the Central Park Steering Committee's report. Before this, Mr. Houghton said, he "hadn't really paid too much attention" to the committee's work. When he did read the report, he explained, his primary concern was the cost.

Steering Committee's Plans Placed on Hold

After the mayor suggested a strategic planning workshop, the Town's focus shifted away from the Steering Committee's recommendations and toward organizing a strategic planning workshop. On May 14, Council voted to withdraw the motion to award the market sounding to Deloitte & Touche. The minutes recorded that "[t]he dates for the Strategic Workshop relating to Central Park will be announced at a future date." Mayor Cooper, on June 4,

sent a letter to the Central Park Steering Committee members to thank them and advise that “the work of the [Central Park] Steering Committee was formally concluded.”

Strategic Planning Workshop Preparations

At the mayor’s request, Ed Houghton organized a strategic planning workshop for Council to discuss recreational facilities on June 11. On June 7, four days before the workshop, he emailed Council and the Town’s department heads explaining that he would begin the session by explaining the workshop’s goals and objectives, and that Marta Proctor would supply a detailed summary of the work completed to date. Marjory Leonard, the Town’s treasurer, would then provide “a very brief look at funding options which will include, money already identified, the money from the Collus PowerStream partnership, funding opportunities and debenture costs.”

This reference to the “money from the CollusPowerStream partnership” was the first time a member of staff or Council publicly referred to the use of the share sale proceeds to fund new recreational facilities. There was no evidence that the allocation of the funds had been discussed before June 2012. Councillor Ian Chadwick’s response to Mr. Houghton’s email also indicates that Council had not considered the matter before:

I must have missed the discussion that said how or even if we would spend the Collus partnership money. If that discussion wasn’t held, shouldn’t it be held before we discuss the park project? To discuss it at the same time implies that decision has already been made. What if we decide later not to spend it and instead bank it in reserves?

Mr. Houghton’s June 7 email to Council and department heads went on to explain that, at the strategic planning workshop, each councillor would have five minutes to share his or her views on how to proceed with the Central Park project. Mr. Houghton advised that he and Mayor Cooper would then facilitate a discussion, following which “we are hoping to arrive at a consensus on firm direction [*sic*] that staff can then work towards.”

Ms. Proctor prepared a slide presentation for the workshop. As part of the presentation, Treasurer Leonard provided Ms. Proctor with an outline of the following potential sources of funding for new recreational facilities:

YMCA funds set aside	\$1,500,000
Potential DC's Indoor Sports	\$900,000
Potential DC's Ice Rink Roof	\$360,000
Debenture (no tax increase)	\$2,700,000
COLLUS funds approximately	\$8,000,000
Total	\$13,460,000

Note: DC refers to development charges.

Concerning the Collus funds, the document noted: “Council has committed to a public process to determine how best to allocate these funds and there is the potential that the public would like to see these funds applied to this project.”

Ms. Proctor’s slide presentation identified “Collus” as a potential source of funds for recreational facilities, but did not include a specific amount:

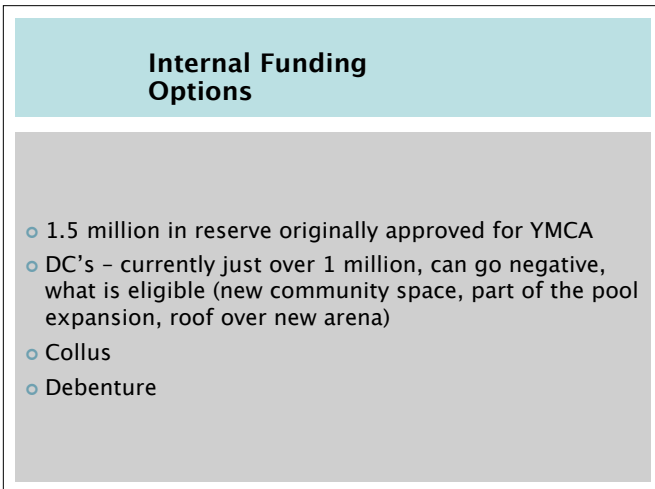


Figure 3.1: Central Park Redevelopment Project Review, June 11, 2012

As staff prepared for the June 11 strategic planning workshop, Mr. Houghton asked his assistant to advise Sprung sales representative Pat Mills about the workshop and let him know that Mr. Houghton would contact him

afterward.* Mr. Houghton testified that he did not ask his assistant to alert anyone else about the workshop. He explained that he notified Mr. Mills because he had earlier agreed to let Mr. Mills know if he heard anything about Council's plans.

The Strategic Planning Workshop

Council met on June 11, 2012, at the Collingwood Public Library for the Central Park Strategic Planning Workshop. To provide some transparency, the Council invited the media and the Central Park Steering Committee. A news report about the meeting described the discussion as a “wide-ranging, two-hour session.” The minutes, recorded by Clerk Sara Almas, reflect the breadth of ideas and issues discussed:

Each member of Council provided comments on their vision for this redevelopment. Comments included:

- Proceed with/without market sounding
- Should the recommended scenario be “phased-in”
- Priorities are ice pad and aquatic infrastructure
- Should the Eddie Bush be refurbished
- Should we look at a Performing Arts Centre
- Concept design has too much parking, need more civic space
- \$35M is too much / \$35M is needed to provided needed service
- Not considering use of COLLUS \$\$\$ at this point.
- Keep ball diamonds at park or determine where they are going
- Concern with limiting the location to Central Park / should another location be investigated
- Real or perceive economic impact of the downtown
- Convert Eddie Bush – need (or seasonal use?)
- Need to be responsible with finances
- Is there partnership opportunities with another municipality
- The concept is supported

* I introduce Sprung in Part Two, Chapter 2.

- Cost of displaced infrastructure
- Cover the outdoor ice surface
- Should funds be given to the YMCA

Staff also created a spreadsheet summarizing the numerous comments and questions councillors voiced during the meeting.

Among other suggestions, many councillors spoke in favour of constructing new facilities in phases, with the first phase focusing on “water and ice.” Councillor Kevin Lloyd first raised the notion, advising: “We need to keep this affordable and meet the immediate needs.” Several other councillors also expressed concern about how the Town would fund a \$35 million multi-use facility, and questioned the value of retaining Deloitte & Touche to conduct market sounding for a public-private partnership. The news report about the meeting indicated that the \$35 million estimated cost was the “major sticking point for councillors.”

Mayor Cooper testified there was a “common theme that \$35 million was too much.” She also stated that Council never discussed how much to pay for the new recreational facilities. Deputy Mayor Rick Lloyd similarly testified that Council did not discuss what would be an acceptable budget for recreational facilities, commenting:

I think they were working towards coming up with some solution. And when a solution was determined, then a budget could be – at that point in time, see if it was realistic. I could have come out with a solution for a hundred million dollars, but it just wasn't realistic for the taxpayers of this community. Never did we ever say it could only be this plateau or this plateau.

Ms. Proctor testified that she hoped to get clarity from Council at the workshop on how it wished to proceed with the Central Park development. No decisions or directions were made at the strategic planning workshop. Instead, the minutes stated: “Staff will prepare options based on the discussion for consideration at a future Council meeting.”

Mayor Cooper testified that she understood this meant staff would research the feasibility of some of the options but did not know how they

would select which options to research. Mr. Houghton, in contrast, testified that he understood that staff would simply compile the comments from the meeting and present them to Council for direction on how to proceed.

At the end of the workshop, the public would have been unsure of what, Council intended to do about the recreational facilities. Mr. Houghton agreed that the public would have believed that Council was waiting for staff to report back on the options discussed, at which time Council would decide how staff should proceed.

Many witnesses at the Inquiry testified that Deputy Mayor Rick Lloyd spoke about Sprung Instant Structures at the meeting and distributed pamphlets about the company.* As explained in Part Two, Chapter 4, the deputy mayor learned about the fabric structure company at a conference in Saskatchewan a week earlier. Ms. Proctor, however, testified that neither Sprung nor fabric buildings were raised at the meeting. Deputy Mayor Lloyd, for his part, testified that he recalled distributing Sprung information at a Council meeting, but did not believe it was at the June 11 workshop.

I am satisfied that the deputy mayor did not publicly raise Sprung or fabric buildings more generally at the workshop. The minutes and staff spreadsheet do not record any discussions on the topic. It also was not reported in the detailed news article about the workshop. Finally, as I explain in Part Two, Chapter 4, in the days after the workshop, Deputy Mayor Lloyd requested that staff look into pricing for two Sprung structures. Nothing in those emails indicates that this was a matter he had already raised with Council a few days earlier.

During the workshop, Mayor Cooper sent Deputy Mayor Lloyd an email, asking: “Same process as Collus going forward???” Mayor Cooper testified that she was not referring to an RFP process but rather to inviting public input before Council made its final decision. In November 2011, before Council reviewed the RFP submissions for the 50 percent sale of Collus, it had held a public information session to answer questions from residents about the sale (see Part One, Chapter 6). Despite the mayor’s apparent desire, no sessions inviting public input took place for the recreational facilities.

* Mr. Houghton, Mr. McNalty, and Mayor Cooper all testified they recalled the deputy mayor discussing Sprung.

During her testimony, Mayor Cooper countered the suggestion that no public input sessions took place by pointing out that anybody from the public could have requested to speak at or attend a Council meeting.

Deputy Mayor Lloyd also testified that he understood that Mayor Cooper's "same process as Collus" statement referred to a "public process," not an RFP process. He stated that he did not consider a public consultation process for the recreational facilities because Council's deliberations would be public.

Approaching Sprung Outside the Public Process

About a week before Council’s strategic planning workshop, Deputy Mayor Rick Lloyd encountered Sprung Instant Structures Ltd. at a conference. The deputy mayor was apparently enamoured with Sprung’s fabric structures and their pricing, although he did not raise fabric buildings at the public workshop. Instead, the day following the workshop, he directed acting Chief Administrative Officer (CAO) Ed Houghton to obtain estimates from Sprung on covering the outdoor arena in Central Park and the outdoor pool in Heritage Park. He included Council and certain staff members in a subsequent request, but only after Mr. Houghton had already contacted Sprung to request prices.

Town and Sprung representatives met and spoke on multiple occasions during June and July, 2012. On July 11, Sprung presented its product directly to Mayor Sandra Cooper, the deputy mayor, Mr. Houghton, and other members of staff. This meeting made two staff members apprehensive, but they did not feel comfortable raising their concerns.

Deputy Mayor Lloyd and Sprung Structures

Introduction to Sprung

Deputy Mayor Rick Lloyd was introduced to Sprung when he attended the Federation of Canadian Municipalities’ annual conference and trade show in Saskatoon on June 1–4, 2012. Mr. Lloyd testified that he had two conversations “at the most” with Sprung’s personnel, although he did not recall whom he spoke with or how long he spoke with them. When asked at the Inquiry hearings what he learned, Mr. Lloyd responded: “Everything.”

He specifically said he learned Sprung structures were fabric buildings reinforced with aluminum that could be repurposed easily, that they had three arenas in Calgary, that they did “stuff” for the federal government, and that “they’d done stuff in Afghanistan ... temporary buildings ... and so on.”

Tom Lloyd (no relation), Sprung’s regional business development manager responsible for Ontario, appeared as a witness at the Inquiry. He testified that he did not attend the conference and that the deputy mayor likely spoke with Sprung representatives from Calgary. Tom Lloyd could not recall whether anyone from Sprung alerted him to the deputy mayor’s apparent interest.

Deputy Mayor Lloyd testified that Sprung appealed to him because the Central Park Steering Committee’s proposal was “unreachable,” Sprung was a Canadian company that had been in business for a long time, and it “seemed like a natural fit” based on the recreational facilities featured in Sprung’s promotional material. During the deputy mayor’s conversation at the trade show, Sprung personnel provided him with a “ballpark” price of \$10 to \$15 million to cover an outdoor pool and an outdoor rink. Mr. Lloyd was enthusiastic about the estimate.

Deputy Mayor Lloyd could not recall whether Sprung indicated that it had successfully covered an outdoor pool in the past.

Mr. Lloyd testified that “over the years, we’ve quite often said, oh, we should cover the outdoor pool.” When pressed to explain who specifically had discussed covering the outdoor pool, Mr. Lloyd responded that his family had discussed it, there was discussion in the community, and he thought former Collingwood councils had considered it. Covering the outdoor pool was not raised at the June 11 strategic planning workshop.

Deputy Mayor Lloyd left his discussions with Sprung personnel believing that the company both supplied and constructed its structures. As I explain in Part Two, Chapter 6, Sprung referred most of its Ontario clients to a separate company, BLT Construction Services, to construct the structures.

Discussions Between the Deputy Mayor and the CAO

On the morning of the June 11, 2012, strategic planning workshop, Deputy Mayor Lloyd met with Mr. Houghton.

Mr. Houghton testified that, during their meeting, the two discussed the

deputy mayor's questions about the upcoming workshop and Mr. Lloyd's meeting with Sprung at the conference. Mr. Houghton, who told the deputy mayor that he had also recently met with Sprung, forwarded Mr. Lloyd some of his correspondence with Sprung representative Pat Mills.

Mr. Houghton did not recall whether he and Mr. Lloyd explicitly discussed using Sprung buildings for the recreational facilities. Still, he understood that the deputy mayor was enthusiastic about Sprung's products, explaining: "I think the conversation was, you know, a little bit more generic but obviously that this could be ... an answer that could allow us to move forward with the multi-use facility ... in the future."

Deputy Mayor Lloyd did not recall discussing Sprung at his meeting with Mr. Houghton. However, he did remember speaking with Mr. Houghton about Sprung after returning from the Saskatoon conference, testifying that he "spoke to everybody that would listen" about the company's product.

The Deputy Mayor's Direction to Investigate Fabric Buildings

On June 12, 2012, the day after Council's strategic planning workshop, Deputy Mayor Lloyd emailed Mr. Houghton to ask him to obtain a price for "a fabric cover to completely go over the Centennial Pool and building at Heritage Park" and "a fabric building to go over the outdoor ice pad at Central park."

Mr. Houghton forwarded this email to Town Clerk Sara Almas, who responded that the deputy mayor "really shouldn't be directing you to do this." Ms. Almas confirmed in her testimony that she sent this email because she believed that an individual member of Council should not be directing staff without at least alerting the other councillors. Mr. Houghton replied: "I need to delegate! Hmmmmm! Just kidding."

Ms. Almas responded and suggested Mr. Houghton ask the deputy mayor to send another email to Mr. Houghton that included all of Council and Marta Proctor, the director of parks, recreation and culture. At that point, Ms. Almas wrote, if no one objected, staff could obtain pricing from Sprung."

The next day, Mr. Mills, the Sprung sales representative, followed up with Mr. Houghton by email and requested a meeting with the "Central

Park Redevelopment Team.” Mr. Houghton responded: “I have been asked by a member of Council to get a ‘rough’ estimate for the installation of two fabric buildings. Can we discuss this?” Mr. Mills replied that he would provide an estimate, “but the cost will be determined by the facilities.” He suggested a meeting and asked several questions about the proposed facilities. Mr. Houghton forwarded this email to the deputy mayor.

On June 14, after Mr. Houghton had requested estimates from Sprung, Deputy Mayor Lloyd emailed Mr. Houghton, Council members, Ms. Proctor, and the Executive Management Committee, writing:

Good afternoon Ed

I would like to request if at all possible to have a price for a building that would enclose the complete Centennial Pool.

A building structure that I would be interested in is the building produced by Sprung Building Products.

I know that they have representatives in Ontario and they would come and price a structure.

As well I would recommend to get a price as well for one of their structures to cover the Outdoor Rink.

Sprung Building systems are used for Ice Rinks, single, double and triple ice rinks as well [as] Swimming Pools.

These Buildings are well insulated and have a Warranty I think of 30 years

Thanking you in advance

Mayor Cooper and Councillors Sandy Cunningham and Kevin Lloyd responded in support of the suggestion. Ms. Proctor asked a member of Town staff to “confirm some approx pricing and what specifically it would / could include for both.” She emailed Mr. Houghton, advising that “[w]e’ve done some preliminary work in this area for the ice rink, their [*sic*] are some limitations. Will expand for the pool and I’ll provide you with an update once we’ve compiled the info.”

Mr. Houghton, in his closing submissions, argued that it was appropriate for staff to obtain pricing on Sprung structures at the deputy mayor’s direction because no one from Council objected to Mr. Lloyd’s email. I do

not accept this explanation. Mr. Houghton asked Mr. Mills from Sprung for pricing on June 13, before the deputy mayor had emailed the other Council members and before he could know whether any other councillors might object. Mr. Houghton was clearly acting at the direction of Deputy Mayor Lloyd, not Council.

As I describe in Part Two, Chapter 2, earlier that year, in March 2012, the Deputy Mayor cautioned against meeting with Ameresco Canada Inc. to discuss recreational facilities because he understood the risks of interacting with a single vendor when a competitive procurement was on the horizon. In his testimony, he explained that, if the Town met with Ameresco “ahead of time and they gave us all their information ... It could have put them into a conflict, I felt.” Despite this rather insightful observation, the deputy mayor did not have the same reservation when it came to pursuing his preferred plan for recreational facilities.

Deputy Mayor Lloyd knew well the risks posed by pursuing quotes from a single vendor when the circumstances required an open, transparent, and public bidding process. I am also satisfied that Mr. Houghton understood the risk in approaching a potential supplier for quotes in circumstances where a competitive procurement would be expected. Mr. Houghton was an experienced member of staff and a long-time CEO of the public utility. In 2012, he had worked for Collingwood for more than 30 years and had steadily advanced to hold senior public service positions. Mr. Houghton understood the conflicts that can arise from meeting with prospective suppliers outside the bidding process. He also understood the need for the Town to conduct an open and transparent procurement process.

Mr. Houghton testified that the strategic planning workshop was an attempt by Council to achieve openness and transparency in its pursuit of new arena and pool facilities. Despite Council’s desire for openness and transparency, Mr. Houghton acknowledged that the first time the subject of covering the outdoor pool came up was in an email that Deputy Mayor Lloyd sent him on June 12, the day after the strategic planning workshop.

The Town's Engagement with Sprung

Sprung's Initial Look at the Arena

In response to the deputy mayor's direction, Dennis Seymour, the Town's manager of recreation facilities and arena supervisor, met with Sprung representatives Tom Lloyd and David MacNeil on June 19, 2012. Tom Lloyd testified that the purpose of the meeting was for Sprung to take a look at the arena and discuss covering it. The next day, Mr. MacNeil, Sprung's territory sales executive, emailed Mr. Seymour "drawings and renderings" and advised him that he would "begin putting some budget numbers together shortly."

Request for Cost Estimates

On June 19, the same day Mr. Seymour met with Sprung, Mr. Houghton arranged a June 21 teleconference to include himself and Deputy Mayor Lloyd, and, from Sprung, Pat Mills, Tom Lloyd, and David MacNeil.

Mr. Houghton testified that he asked Rick Lloyd to join in the phone call because the Sprung structures were "his concept," and he wanted the deputy mayor to provide input. Mr. Houghton did not invite Ms. Proctor, the director of parks, recreation and culture, to participate in the call. He testified he "didn't put [his] mind" to inviting Ms. Proctor because the specific request to seek a price for fabric buildings had come from Deputy Mayor Lloyd.

Mr. Houghton testified that, during the call, the Sprung representatives provided general information about their structures, after which he and Deputy Mayor Lloyd requested rough cost estimates for Sprung structures to cover Centennial Pool and the outdoor ice rink at Central Park. Deputy Mayor Lloyd stated in his evidence that he did not recall the conversation.

Mr. Houghton testified that, at the meeting, he and Deputy Mayor Lloyd learned that Mr. Seymour had met with Sprung two days earlier. Mr. Houghton later explained that, although he was aware Ms. Proctor was taking steps to contact Sprung, he was surprised to learn that the contact had already happened. He testified that this discovery led Deputy Mayor Lloyd to direct him to be the sole point of contact with Sprung going forward. As I discuss

further in Part Two, Chapter 7, I do not accept that this discovery was the origin of the deputy mayor's direction.

On June 25, Dave McNalty, the Town's manager of fleet, facilities and purchasing, provided Sprung with information on the outdoor rink at Central Park and Centennial Pool, explaining that the pool's "infrastructure has already been, or is in the process of being upgraded." Mr. McNalty testified that he conveyed this information to Sprung at Mr. Houghton's instruction to assist Sprung in its work on the concept and budget estimate.

Hours after his telephone meeting with Sprung representatives on June 21, Mr. Houghton sent an invitation for a June 29, 2012, "Meeting with Sprung Buildings" to Mayor Cooper, Deputy Mayor Lloyd, and Mr. McNalty. On June 27, Deputy Mayor Lloyd asked Mr. Houghton to "delay the meeting for 2 weeks." The meeting was rescheduled for July 11.

Meeting Between Deputy Mayor and a Swim Team Parent

The Collingwood Clippers is a competitive swimming club. In 2012, the club was, unsurprisingly, an advocate for an expanded pool facility. During the previous two years, some parents had carried out their own research into the possibility of covering Centennial Pool with a Sprung structure. They shared what they had learned with Marta Proctor and Councillor Keith Hull. On July 3, 2012, Linda Simpson, a Clipper parent who had researched Sprung, emailed the mayor and deputy mayor to express her support for the "proposal to cover Centennial Pool." Ms. Simpson offered to provide research that the team had undertaken in 2010 on covering the pool with a Sprung structure. Deputy Mayor Lloyd responded that he was meeting with Sprung the next week to "price out the costs." He also asked to meet with Ms. Simpson to review the information she had gathered about the company.

Ms. Simpson and the deputy mayor arranged to meet on July 6 at the local flower shop Mr. Lloyd operated. In the email chain, Mayor Cooper suggested that the deputy mayor bring a member of staff to the meeting. Mr. Lloyd rejected the idea, writing that if Ms. Simpson's information proved "interesting," then he would involve staff.

After their meeting, Ms. Simpson emailed the deputy mayor with "the

specs you asked for, as put forth by Aquatic Sport Council Ontario for Regional Standards.” Ms. Simpson expressed her enthusiasm for working “collaboratively to create a long-term plan for Sports Tourism / Pool development in Collingwood and the South Georgian Bay region.”

Although the deputy mayor met with Ms. Simpson in early July 2012 to gather background information, there is no evidence that members of staff or Council had further meetings with the Clippers before August 27, 2012, when Council voted to proceed with covering Centennial Pool with a Sprung structure. As I discuss in Part Two, Chapter 15, after the Town signed the contract for the two Sprung facilities in August 2012, the Clippers requested that Council approve additional upgrades for the pool so that it met the requirements to hold competitive swim meets. Council agreed, which increased the scope of work and cost of the project.

Sprung’s Meeting with the Mayor and the Deputy Mayor

Mayor Cooper, Deputy Mayor Lloyd, CAO Houghton, and Fleet, Facilities and Purchasing Manager Dave McNalty met with Sprung representatives Tom Lloyd, Pat Mills, and David MacNeil on July 11, 2012. Marta Proctor was not included in the calendar invites for this meeting and testified that she did not attend.

Mr. Houghton testified that the meeting was organized because there had been “quite a few discussions back and forth with Council members” about fabric structures and that it made sense for Mayor Cooper to perform due diligence and learn more about Sprung. Mr. Houghton also noted that the Town wanted to learn more about Sprung’s technology and whether it was suitable for Collingwood’s purposes.

Tom Lloyd testified that he understood that Town staff, including Mr. Houghton and Mr. Seymour, initiated the meeting because they wanted the “[m]ayor to hear directly about what Sprung could do.”

Recollections of the meeting differed.

Tom Lloyd testified that the meeting focused on the Town’s need for a new arena. He did not recall a discussion about the pool. Mr. Lloyd also noted that he provided the Town with information about Sprung arenas

and advised that Sprung could offer a “turnkey facility,” meaning the Town would not be responsible for any aspect of the design and construction. The facility would be ready for use once construction was complete.

Tom Lloyd also recalled that, at this meeting, someone from the Town stated that the Town had already investigated a \$35 million multi-use facility and a less expensive pre-engineered steel facility. He recalled being told, although he could not recall who relayed the information, that the Town was not interested in a pre-engineered facility. As I discuss in Part Two, Chapter 7, pre-engineered steel was a popular and cost-effective construction method. Later in July 2012, staff asked an architectural firm to compare a fabric arena to a pre-engineered steel arena.

Sandra Cooper testified that the meeting was short and “introductory.” She stated that Sprung representatives provided general information about the company’s facilities while Town representatives discussed Collingwood’s need for an additional ice surface. Ms. Cooper did not recall discussions of a turnkey facility or comparing Sprung structures with other types of facilities. She also added that she did not receive an agenda for the meeting and did not recall anyone taking minutes.

Mr. Houghton recalled discussions of Sprung’s history, its insulation technology, and the fact that the company was in the process of creating rough budgets for potential Collingwood facilities.

At the Inquiry hearings, two Town staff members expressed concerns about whether this meeting was appropriate. Dave McNalty testified that it was “probably not” appropriate for Mayor Cooper to attend the meeting because there was a risk that having her meet a supplier at this point could cause her to lose her objectivity in an eventual procurement process. Mr. McNalty’s concerns did not extend to Town staff because he felt staff members were appropriately undertaking an “investigative process” during which they were acquiring information about whether a Sprung facility was worth pursuing.

Marta Proctor, who did not attend the meeting, had general concerns about Town representatives meeting with Sprung at this point. She felt that any meeting with a potential contractor that was not part of a formal bid process or otherwise formally directed by Council was not “in accordance with good municipal business practice.”

Although Mr. McNalty and Ms. Proctor had slightly different concerns about the July 11 meeting, they both testified that the work environment at the Town left them with a sense of having no avenues through which they could raise their feelings. Mr. McNalty stated that he felt it “wasn’t [my] place” to raise concerns with either CAO Houghton, Mayor Cooper, or Deputy Mayor Lloyd owing to “[t]heir relative position in the Town management and hierarchy.”

Ms. Proctor testified that, when she learned about the meeting after the fact, she raised her concerns about how the Town was pursuing options for recreational facilities with the Executive Management Committee. She said, however, that:

[T]here was resistance from the Executive Management Committee to say to members of Council that their behaviour is inappropriate and we need to do our business differently, because our former CAO tried to do that, and there was fear in the organization that there would be repercussions, and that is not how we do things in Collingwood, is what I was told.

Mr. Houghton and Ms. Cooper disagreed with Mr. McNalty’s and Ms. Proctor’s view that the meeting was inappropriate from a procurement perspective. Ms. Cooper took the position that the interaction with Sprung was only “a meet and greet” and that no commitments were made regarding a potential contract or any follow-up meetings.

Mr. Houghton testified that the meeting was appropriate because the Town was simply investigating a potential option for a recreational facility. He did not believe that meeting with Sprung at this time threatened to undermine a potential procurement process because Council had not yet given any direction on which facilities to pursue. He was not concerned that meeting with Sprung at this point risked creating a public perception that Sprung was being given a head start on a proposal to construct facilities for the Town.

Delivery of Preliminary Budgets

Council met on July 16, 2012. Before the meeting, Sprung's David MacNeil sent Collingwood's Deputy Mayor Lloyd, Mayor Cooper, Dave McNalty, and Ed Houghton a link to budgets for Sprung covers for both the outdoor pool and arena and a "New Sprung Performance Arena." As I discussed above, Mr. Houghton testified that he and the deputy mayor had requested estimates from Sprung during their June 21 phone conversation.

The budgets were addressed to "Rick Lloyd Deputy Mayor Town of Collingwood," and each bore the warning: "***THIS IS BUDGETARY PRICING ONLY, THIS PRICING CAN CHANGE WITH THE FINAL DESIGN*.**" Sprung provided the following estimates, along with a list of "included accessories":

1. a cover for the existing Centennial Pool with an estimated construction time of "about 30 days from start to finish turnkey" and an estimated cost of \$2,385,904 plus HST;
2. a cover for the existing outdoor arena with an estimated construction time of "4-5 months turnkey" and an estimated cost of \$3,775,000 plus HST; and
3. a "New Stand Alone Insulated Sprung Performance Arena" with listed accessories with an estimated construction time of "5-6 months turnkey" and an estimated cost of \$4,925,000 plus HST.

The budgets also stated that the pricing was "provided by Sprung and our alliance partner."

In the weeks following the delivery of these budgets, the Town, Sprung, and its alliance partner BLT engaged in detailed discussions regarding the procurement of recreational facilities. While these discussions were taking place, Mr. Bonwick and his company, Green Leaf, established a business relationship with BLT and began lobbying members of Council to authorize the sole-source procurement of Sprung aquatic and arena facilities.

Discussion of Recreational Facilities by Council, July 16, 2012

After the June 11 strategic planning workshop, Town staff prepared a document presenting Council with a choice of two paths for new recreational facilities: continue with the Steering Committee's multi-use facility proposal or select from a list of alternative options, which included "fabric buildings." The Council discussed the document at its July 16 meeting. Armed with the information Sprung Instant Structures Ltd. had provided the Town, Deputy Mayor Rick Lloyd put forward a motion for staff to investigate constructing a single-pad arena and enclose the outdoor pool with a fabric cover. A majority of Council agreed. They directed staff to report back in six weeks – by August 27, 2012 – with detailed estimates and timelines for building both facilities.

The August 27, 2012, deadline provided staff with six weeks to prepare the staff report. Marta Proctor, director of parks, recreation and culture, who was scheduled to be on vacation for part of the six weeks before the delivery of the report, expressed concern about the deadline during the Council meeting, but acting CAO Ed Houghton did not request that Council give staff more time. Instead, he said the Executive Management Committee (EMC) would take responsibility for the report, testifying at the hearings that he was "trying to answer the needs, wants, and desires of Council" as best he could.

Strategic Planning Workshop Results

Town of Collingwood department heads met on June 12, the day after Council's strategic planning workshop. At the department heads' meeting, Mr. Houghton directed staff to draft "fact sheets" to support the resolutions

requested by Council at the workshop. Staff prepared a document titled “Summary of Resolutions.” Unlike a staff report, this document did not provide a staff recommendation on which direction Council should pursue. Staff had already recommended pursuing the Central Park Steering Committee’s recommendations, and Council had provided directions to do so. Instead, the Summary of Resolutions outlined two recreational facility “directions” for Council to choose from: “Direction A” pursued the Central Park Steering Committee’s recommendations already passed by Council; and “Direction B” abandoned those recommendations to pursue one or more of 10 new options. These included the ones Council discussed at the strategic planning workshop, as well as fabric buildings, which Council had not discussed at the workshop.

Direction A – Pursuing the Committee’s Recommendations

Concerning Direction A, the Summary of Resolutions stated that Council had endorsed the Steering Committee’s recommended multi-use facility in principle, noting that rescinding those resolutions would require a two-thirds Council vote. It outlined Council’s related resolutions, including earlier directions to staff to develop, within six months, a funding strategy, establish a Phase 2 Steering Committee, and develop actions and timelines for all the other Central Park Steering Committee recommendations.

The summary included staff’s opinion that working with the YMCA was an efficient way to provide recreational resources and that the partnership had community support. It reiterated staff’s recommendations that Council determine funding options and create a Phase 2 Steering Committee, highlighting that “[t]he benefits of involving a skilled volunteer steering committee include transparency and accountability.” It also addressed “phasing” the redevelopment, explaining: “To accurately determine the most viable options and associated costs, building construction and site design drawings would need to be completed.” The Summary of Resolutions stated that these would cost approximately \$550,000 and warned that Council should expect significant remobilization / construction costs not accounted for in the estimates if phasing was pursued.

Direction B – Abandoning the Recommendations

In contrast, limited information was presented for the options listed under Direction B. The Summary of Resolutions did not include a detailed analysis of any of the new options, nor did it include information about the anticipated costs associated with any of them. Instead, it cautioned: “Adding new or different components would require additional architectural / engineering work at the various sites to determine what is possible to construct, where, and the implications to existing infrastructure.”

Marta Proctor testified that, in her experience, “any capital project that we would undertake should have appropriate drawings, costing, and an operating business plan associated with it.” Ms. Proctor further testified that the majority of that work would require “external expertise,” explaining: “There could be some work on the business plan that Staff could have assisted with, but ... certainly not if they were doing it for multiple options ... our resources were already stretched with what we were currently trying to do, never mind we didn’t have a whole capital planning team to do this type of work.”

With respect to the Town’s aquatic needs, Direction B included options to build upon the existing YMCA facility or enclose the outdoor pool with a fabric building. Dave McNalty, Collingwood’s manager of fleet, facilities, and purchasing, testified that he was unaware of any investigation into whether the pool could be covered with a fabric structure.

None of the witnesses who appeared at the hearings recalled who added the option of enclosing the pool with a fabric building to Direction B. Clerk Sara Almas assumed it was as a result of the deputy mayor’s June 14 email requesting that staff obtain prices for Sprung structures (see Part Two, Chapter 4). Mr. McNalty believed they were included because Sprung had already met with the Town, and Deputy Mayor Lloyd, Mayor Sandra Cooper, and Mr. Houghton had expressed interest in pursuing Sprung.

The Summary of Resolutions identified several “challenges” in enclosing the outdoor pool, including “Requires further investigation to determine feasibility” and “Current facility is old and requires upgrading to meet contemporary standards.” As explained in Part Two, Chapter 15, the realities of converting the Town’s outdoor pool to a fabric covered aquatic facility that met competitive swim meet standards revealed themselves after Council voted to proceed with Sprung.

Direction B also included four options for additional ice rink facilities, including constructing a single- or double-pad arena, covering the outdoor rink with a roof, and enclosing the outdoor rink with a fabric building. Challenges listed for enclosing the outdoor rink with a fabric building included:

- “Requires investigation to determine feasibility”;
- “Need to invest significant money in Eddie Bush arena”;
- “No efficiencies in separate ice pads”; and
- “Other infrastructure may be impacted i.e. lawn bowling and ball diamond(s) would likely need to be relocated.”

The Summary of Resolutions concluded: “Should any of these new recommendations be approved additional public / stakeholder engagement may be required[,] as well as the development and costing of conceptual drawings and a 5 year business plan.” Ms. Proctor would go on to reiterate the need for investigation into the costs associated with the Direction B options when the Summary of Resolutions was presented to Council on July 16.

Preparations for the Meeting

Ameresco Asks to Present to Council

As explained in Part Two, Chapter 2, Ameresco Canada Inc.– in partnership with Greenland International Consulting – had met with Town staff in April 2012 to express interest in assisting the Town with the construction of a multi-use recreational facility. On May 22, 2012, Councillor Kevin Lloyd met with Mark Palmer of Greenland. The following day, Mr. Palmer emailed Councillor Lloyd:

I have marked down June 2nd as the workshop date for the ongoing MURF [multi-use recreational facility] process. I think it's open to the public?...

I will let the rest of the Ameresco team to [*sic*] remain patient while the MURF process starts up again on June 2nd. We are looking forward to the RFQ phase very soon or invitation to be added to a future consent

agenda so that we can make a public deputation at Council about our DBF (Design-Build-Finance) team and via an open / transparent process.

Mr. Palmer attached to his email his speaking notes from Ameresco and Greenland's meeting with the Town on April 17, designs for a proposed recreational facility in Central Park, and a draft request for qualification (RFQ) document. The RFQ solicited a private firm to engage in a public-private partnership with the Town for the development of a multi-use recreational facility in Central Park.

One month later, on June 20, Anthony DaSilva, vice-president and chief operating officer of Ameresco, sent a letter to the mayor's executive assistant, stating that Ameresco wanted to participate in the June 25 Council meeting. Mr. DaSilva asked that his letter be included in the meeting agenda and that Ameresco be allowed to make a deputation concerning its proposal to assist Council in investigating new recreational facilities. Mayor Cooper forwarded Ameresco's letter to Ed Houghton on June 20, who responded: "I'm not sure their letter is very wise. Injecting themselves so forcefully is not always appreciated." Mayor Cooper replied, "I totally agree."

Central Park Steering Committee's Deputation

Meanwhile, Central Park Steering Committee co-chairs Claire Tucker-Reid and Brian Saunderson began planning a deputation to Council to "reiterate the rationale for the [Steering Committee's] recommendations and debunk some of the perceptions that were flying around at the strategic planning session." They consulted with Ms. Proctor, who informed them about the draft resolutions. On July 5, Ms. Proctor told Ms. Tucker-Reid that she and Mr. Saunderson had been approved to make a deputation at the July 16 Council meeting.

Summary of Resolutions Shared with Councillors West and Hull

On July 11, Ms. Proctor sent a draft of the Summary of Resolutions to Ed Houghton, the Executive Management Committee, and Councillors Dale West and Keith Hull. Councillors Hull and West were Council

representatives to the Parks, Recreation and Culture Advisory Committee (PRCAC). Ms. Proctor indicated that she was sending the document to Councillors West and Hull “in case they have any input before this package is finalized.” Both Councillors provided feedback and Councillor West suggested what he felt staff’s ultimate recommendation to Council should be on July 16.

Email Exchange Between the Mayor and Deputy Mayor

One hour before the Council meeting, Mayor Cooper sent Deputy Mayor Rick Lloyd an email with the subject “2/3.” In the correspondence, the mayor asked: “Do we have two thirds to scrap central Park ...” Deputy Mayor Lloyd responded, “If you want it scraped [sic] then I think we can make that happen, let me know.” Ms. Cooper said in her testimony that she sent this email to Deputy Mayor Lloyd because she believed he generally had a good sense of how Councillors might be prepared to vote on a given motion. She also stated that the deputy mayor was able to persuade other Councillors.

The Council Meeting, July 16

PRCAC and Central Park Steering Committee Deputations

The July 16 Council meeting began with deputations by Parks, Recreation and Culture Advisory Committee chair Penny Skelton, and Central Park Steering Committee co-chairs Claire Tucker-Reid and Brian Saunderson. They emphasized the need for proper planning, due diligence, and community input into Council’s consideration of recreational facility options. They urged Council to examine the operating costs associated with the various options. Council did not ask Ms. Skelton, Mr. Saunderson, or Ms. Tucker-Reid any questions at the meeting.

Ameresco Not to Provide a Deputation

During the Council meeting, Councillor Ian Chadwick raised Ameresco’s June 20 letter requesting a deputation to Council and said that he “would

have liked to have heard what they had to say.” Mayor Cooper stated it was her understanding that the clerk’s office had invited Ameresco to make a deputation and then asked CAO Houghton for further explanation. In response, Mr. Houghton explained to Council that he and Mayor Cooper did not believe it would be appropriate for Ameresco to provide a deputation at the meeting. Ameresco did not make a deputation at the meeting.

Summary of Resolutions Presented

The majority of the Council session was spent discussing the Summary of Resolutions, presented by Mr. Houghton and Ms. Proctor, and Council’s preferred approach to the construction of new recreational facilities. Mr. Houghton began by providing an overview of the strategic planning workshop that had taken place on June 11. The CAO stated that the goal for the July 16 meeting was to put forward information that would allow Council to “provide staff with clear direction that will allow us to continue to move forward in a positive and productive manner.” Ms. Proctor outlined Direction A and Direction B to Council. Town Clerk Almas then explained that a two-thirds majority Council vote was required to rescind its earlier resolutions relating to the Steering Committee’s recommendations.

Mayor Cooper opened the floor for questions and comments. Councillor Hull expressed his support for the multi-use facility proposed by the Steering Committee. He stated that the “\$34 million bill” would not be funded entirely by the Town’s taxpayers and advocated for a committee to identify funding opportunities. He also noted that, if Council was to consider alternative facilities, the same due diligence should be carried out on these facilities as that employed by the Steering Committee. Councillor Joe Garhouse also supported continuing with the Steering Committee’s proposal.

Deputy Mayor Rick Lloyd agreed that the Town was in dire need of new recreational facilities but stated that the cost of the Steering Committee’s facility was too high. He asserted that the Town’s residents needed a new ice pad and indoor pool and made the following proposal:

I actually would encourage and would like to request council support to have staff prepare a report for our next council meeting that looks at a

structure over top for Centennial Pool, which has been looked at, that would allow bleachers and so on. A structure that's approximately 100 by 143 feet in size.

I know some discussions of this kind of facility is less than \$3 million. And it would be something that could be done immediately to meet these needs. But it wouldn't hamper us with our future concerns.

And as well, I would like the staff to give us – to include in the report a new ice pad, also at Central Park. And I would like to see us move forward as quickly as possible with the funding, again looking at the needs of today.

I think when I've listened to the committee and seen some of the recommendations it's come loud and clear to me that we need to move forward as quickly as possible. And I have, through some discussions looked at different companies that give us alternatives. Very viable alternatives for now. Not Band-Aid alternatives. Something that [has] a life expectancy of 60 years or more. Something that can be done immediately. Something that perhaps as soon as the pool closes in September could be fully functional, operational within six to eight weeks after. So that the people do get today what they have been wanting for a long time.

That can work, hopefully, something with the Y or through you, Marta, whoever may give us an operating proposal through partnerships or through us alone.

The structure could either be an architectural membrane, or fabric building, that can be repurposed in the future. Repurposed as such that if we found that there is a demand, as we said, in 2035 or 2030 that we could have a large multiuse facility that we have the funding for. That this facility or this building could be repurposed.

Deputy Mayor Lloyd stated later in the meeting that he was aware of an arena facility that would cost “in the neighbourhood of \$5 million for a complete facility that's turnkey.” The dimensions of the pool Mr. Lloyd referred

* The term “turnkey” refers to a structure that is ready for immediate use upon completion of the construction.

to were the same as those described in the budget that Sprung had sent to the deputy mayor earlier that day (See Part Two, Chapter 4). Similarly, the pricing for the pool cover and the arena referred to by the deputy mayor were rounded versions of the prices in the Sprung budgets.

Councillors Ian Chadwick, Dale West, and Mike Edwards supported Deputy Mayor Lloyd's proposition to meet the Town's short-term needs for an indoor pool and new arena. These councillors also expressed support for the formation of a committee to examine the creation of a larger phased recreational facility in the future. Councillor West suggested that implementing Deputy Mayor Lloyd's proposal should include consulting with Ameresco to determine what type of facilities the company could offer.

Councillor Sandy Cunningham argued that the proposed Steering Committee facility was too expensive and noted that the Town sorely needed a new pool and ice surface. He agreed with Deputy Mayor Lloyd's proposal and noted:

I'm familiar with this company that Mr. Lloyd is talking about. I have seen their structures. I have been to Calgary. They have them there and Calgary is a city of hundreds of thousands of people ... we can meet our needs very quickly with the type of units that Mr. Lloyd is talking about. And we could do it practically immediately.

Councillor Kevin Lloyd also spoke in support of the deputy mayor's proposal. He requested that alternative options for both a pool and an ice surface be costed and presented to Council, to eventually phase the new facilities into a cohesive community centre.

Various councillors and staff also mentioned the possibility of using the revenues from the Collus share sale to fund new recreational facilities. In defending the notion that the Town's taxpayers would not have to bear the entire cost of the Steering Committee's facility, Councillor Hull mentioned that the Collus proceeds might be available to defray the costs of the facility. In the discussion about funding for recreational facilities, CAO Houghton also stated:

I just wanted to mention through to you to council that at our meeting on June the 11th, we did talk about financial numbers. The treasurer mentioned that internally there is potentially \$13.5 million. Now I reluctantly say this because at the June 11th [meeting] we did receive negative comments back about even mentioning it without having the opportunity to go to the public and making sure that this is the direction they would like to go. But there is the opportunity with the Collus partnership, there was \$8 million. There was also through debentures and development charges, so Ms. Leonard [Marjory Leonard, Town treasurer] noted all of that and broke that down and then what she did is she looked at what \$10 million in debentures would cost over a 25-year period of time. So we did bring that up at the last meeting.

Toward the end of the Council discussion period, Ms. Proctor issued a note of caution:

[I]f we are going to move forward with this project or any adjusted project, especially from understanding the feasibility and the implications of it, we need to be clear what the concept is, what it's going to cost, and what implications it has to site development and to the infrastructure that exists there.

Deputy Mayor's Motion Approved

As Council finished its discussion of recreational facilities, Mayor Cooper announced that Deputy Mayor Lloyd was putting forward the following motion:

Be it resolved, that Council direct staff to pursue the following recommended options and develop a project timeline and detailed estimates and bring report back to Council no later than August 27, 2012.

... Construct a single pad arena that could be phased into a double pad, as well enclose the outdoor pool with a fabric building.

Council voted in favour of the motion eight to one, with Councillor Gardhouse opposing.

Deputy Mayor Rick Lloyd testified that, before he put the motion forward and voted for it, the only pool enclosure he had looked into was Sprung's fabric structure. He said, "I never discussed covering the pool with any other company, no business, no building, no nothing." Mr. Lloyd also stated that his investigations into Sprung's fabric structures before the Council meeting were limited to promotional materials from the company and his discussions with Collingwood Clippers parent Linda Simpson.* He also testified that he did not consult other communities that had covered their pools with Sprung structures before the Council meeting on July 16. When asked why he did not attempt to verify the Sprung promotional information independently, Mr. Lloyd responded:

Because I felt that that was the correct direction we needed to go. The price was right. The product was good. If I had to do it all over again, I'd do it exactly the same thing.

Similarly, Mayor Cooper testified that, before the July 16 meeting, the only information she had about fabric buildings was Sprung promotional materials that Deputy Mayor Lloyd had provided and information from her July 11 meeting with Sprung representatives. She could not recall whether any other kinds of pool structures had been considered before the Council meeting. When asked whether anything specific about fabric structures led her to believe they were the best option to cover Centennial Pool, Ms. Cooper responded, "not at the time." Mr. McNalty, Ms. Proctor, and Ms. Almas agreed that staff did not research other options available for covering the outdoor pool before the July 16 Council meeting.

Consequently, by the July 16 Council meeting, Deputy Mayor Lloyd and Mayor Cooper – and to a lesser extent the rest of Council – were in possession of asymmetrical information regarding the alternative options listed in Direction B of the Summary of Resolutions. By the time a vote was called on the deputy mayor's motion, all the Town's councillors had received

* Ms. Simpson's discussions with Deputy Mayor Lloyd are detailed in Part Two, Chapter 4.

information about Sprung structures in the deputy mayor's June 14 email. In addition, the mayor and deputy mayor had met with and received promotional information from Sprung at various junctures. As for the other options under consideration, their knowledge was restricted to the information in the Summary of Resolutions itself.

Deputy Mayor's Wish to Work with Staff

As Deputy Mayor Lloyd was outlining his recreational facility recommendations, he made the following statement:

As Chair of Finance, I really would like to work with Staff and our CAO to come up with an alternative ... to look at covering our Centennial Pool and a new ice pad at Central Park.

As I explain in Part Two, Chapter 10, the deputy mayor reviewed a draft staff report, suggesting changes to make Sprung's fabric structures more attractive to Council. Both Deputy Mayor Rick Lloyd and acting CAO Ed Houghton testified that, at the July 16 Council meeting, no one objected to the deputy mayor's involvement in the staff's work investigating recreational facilities. Both men stated that they interpreted this lack of objection as Council's approval of the deputy mayor's involvement. Mr. Houghton did not agree with the statement put to him by Ms. Cooper's counsel that the deputy mayor's involvement in the staff report should have been subject to a formal Council motion.

As I explain in more detail in Part Two, Chapter 10, it was not appropriate for Deputy Mayor Lloyd to involve himself in the staff report. It is the staff's responsibility to investigate policy options and provide Council with objective recommendations free of partisan influence. Councillors should not interfere with the staff's work in a manner that compromises or politicizes staff's recommendations. The Council Code of Ethics, in force at the time, stated that councillors should "[r]efrain from using their position to improperly influence members of Staff in their duties or functions."

In his closing submissions, Mr. Houghton stated that he interpreted

Deputy Mayor Lloyd's statement at the July 16 meeting and the absence of objection from Council as a direction from Council that Mr. Houghton work with Deputy Mayor Lloyd in completing the staff report. As Ms. Cooper's counsel implied, Council's silence does not mean that Council endorsed the deputy mayor's involvement in the preparation of the report. Council passed no formal motion permitting Deputy Mayor Lloyd to participate in controlling the style and content of the staff report requested by Council. As the Town's executive director of public works and engineering, Mr. Houghton would have attended many Council meetings and understood exactly what constituted a proper direction from Council.

Acting CAO Houghton Takes Control of Staff Report

Before Council voted on Deputy Mayor Rick Lloyd's motion, he emailed Mr. Houghton: "The motion I have here is for staff report to be done no later than aug27. I would like it for July 30th but that might be too agreesive [*sic*]." Mr. Houghton replied, "make it no later than August 27th."

Both Mr. Houghton and Mr. Lloyd confirmed at the hearings that Mr. Houghton spoke with the deputy mayor before the motion was placed before Council for a vote, and said that Mr. Houghton meant to indicate that the deadline should be after August 27, not before. Mr. Lloyd testified, "Well, I had already put this through and pushed it. I was aggressively pushing to get this thing done." The motion directing staff to report on options for covering the pool and constructing an arena was put forward and passed with a deadline of August 27.

Ms. Leonard, Mr. McNalty, and Ms. Almas all testified that they believed that Council's deadline did not provide staff with adequate time to complete the work required for the report. Ms. Almas stated that other staff members also had concerns about the short deadline.

Staff's worry was understandable. The Summary of Resolutions stated that new or different components "would require additional architectural / engineering work at the various sites to determine what is possible to construct, where, and the implications to existing infrastructure." It is difficult to see how that work could be completed for two structures in six weeks. In addition, Ms. Proctor was scheduled to be on vacation for almost half of that

time, including three of the final seven days before the August 27 Council meeting. Ms. Proctor expressed these concerns at the meeting:

As much as we would be very happy to explore these options, I am concerned a little about the timeline and the obligations we have as Staff with the events and summer schedules. I think that to make a good decision we need to have all the information and unless we have somebody externally, which really is a feasibility study in costing to help us determine the site – site implications because we can come back with some estimates of the buildings – okay. I'm not sure if they have operational costs in there and everything.

I guess if somebody's got all that information to present us, that's great.

After Ms. Proctor expressed her thoughts at the Council meeting, Mr. Houghton stated:

I think that what we'll do is Staff will caucus, we'll have a discussion about it, I think what we'll do is we need to be able to prop up and support Marta in a whole bunch of different directions and ways. Recognizing, I think, she has some personal time that she needs. I think that there'll be an opportunity for the executive management team to again discuss that ... And if there's somebody that we can bring in to assist us, we'll certainly do that.

Mr. Houghton testified at the Inquiry that that he and the Executive Management Committee (EMC) assumed responsibility for the staff report:

[A]t this point in time, it was not parks, recreation, and culture that were taking the lead on [the staff report] after July 16th ... I accept that they could have easily been involved, but it wasn't a parks, recreation, and culture project at this point in time. It was parks, recreation, and culture facilities, but because of Marta needing time, the EMC was taking it over.

Mr. McNalty and Ms. Proctor both testified that they did not think it was

appropriate to question the deadline. Mr. McNalty said: “it wasn’t my place to change the date or to request that the date would be changed.” Ms. Proctor similarly stated in her evidence that “It was not my position to question” Mr. Houghton’s decision that he and the EMC would assume control over the staff report writing process and ensure Council’s deadline was met.

It is noteworthy that Mayor Cooper testified that she did not know why August 27 was selected as the deadline and that the deadline could have been extended if staff required additional time.

When asked why he did not advise Council at the meeting that staff would need more time to complete its investigations of the selected options for the multimillion-dollar project, Mr. Houghton initially suggested that Council was so excited about the motion that he was unable to stop its progress. He then stated that the same question “could be put to Ms. Proctor;” before concluding:

I don’t know why I didn’t do it. I’m trying – I’m saying I’m trying to answer the needs, wants, and desires of Council and doing my best that I can. That’s what I was doing.

If Council’s deadline impeded staff’s ability to investigate the new options and provide well-informed recommendations, then Mr. Houghton should have raised this problem with Council. As acting CAO, Mr. Houghton’s role was not to follow Council’s directions without question. When Mr. Houghton decided to accept responsibility for the report on behalf of the EMC instead of reinforcing Ms. Proctor’s expressed concerns about the deadline Council proposed, he placed staff in an unacceptable position.

As I explain later in this Report, the limited time allotted to complete the staff report undermined Council’s ability to make a fully informed decision on the purchase and construction of new recreational facilities. In owning the staff report, Mr. Houghton also owned this result.

Staff’s Understanding of Council’s Motion

After the July 16 meeting, Mr. McNalty understood that staff would continue to investigate the options selected by Council and report back with a timeline

and estimates. He believed staff was planning to provide cost comparisons for different types of arenas to Council. For the pool, staff would provide information on the components to be included in a fabric-covered aquatics facility. Ms. Proctor, Ms. Almas, and Ms. Leonard had similar understandings of the information staff had been asked to collect.

Ms. Proctor also understood that, after reviewing the options presented by staff, Council would select its preferred facilities and ask for a more in-depth assessment of them. Ms. Leonard anticipated that Council would use the information provided to form the basis of a request for proposal (RFP) to identify a supplier for new recreational facilities. Ms. Almas expected Council to review the options provided by staff and decide between pursuing the original multi-use facility proposed by the Steering Committee and undertaking an RFP to pursue suppliers for new facilities.

On July 16, the Town's treasurer and its clerk did not anticipate a recommendation that Council approve the purchase and construction of a pool cover and new arena from a specific supplier without the benefit of a competitive procurement process. In just six short weeks, however, this is exactly what would take place.

“Good Old Boys Prevail”

Hours after the Council meeting, Councillor Dale West emailed Deputy Mayor Rick Lloyd stating, “we are closer than we have ever been.” Later in the email thread, Councillor West proposed that both Sprung and Ameresco representatives provide deputations to Council after which staff would follow up on their proposals. Deputy Mayor Lloyd agreed.

That night, Deputy Mayor Lloyd emailed Councillor Sandy Cunningham, stating, “Well done my frirnd! [*sic*].” Councillor Cunningham responded, “The good old boys prevail as always. Don't you love it.”

Paul Bonwick's Introductions to Sprung and BLT

After acting Chief Administrative Officer (CAO) Ed Houghton asked Sprung Structures for preliminary pricing for a pool and an arena in June 2012, Tom Lloyd of Sprung reconnected with an old Collingwood contact, Abby Stec.

Mr. Lloyd met Ms. Stec in 2009. At that time, Ms. Stec worked as a development officer for the Pretty River Academy, a private school in Collingwood. She was researching options for covering the school's outdoor soccer field and, as part of that process, spoke with Tom Lloyd and David MacNeil about Sprung. Sprung was one of three fabric builder suppliers that Ms. Stec investigated.

Ms. Stec and Mr. Lloyd continued to discuss a potential sports facility at the Pretty River Academy until October 2011. At that time, Ms. Stec left the school to work with Paul Bonwick at his company, Compenso Communications Inc.

When Tom Lloyd contacted Ms. Stec in 2012, she was working for Green Leaf Distribution Inc., a company Mr. Bonwick created to market solar-powered attic vents. Ms. Stec introduced Tom Lloyd to Paul Bonwick. The two men began discussing how Mr. Bonwick could help Sprung in Collingwood. Mr. Lloyd was interested in involving Mr. Bonwick, in part because Deputy Mayor Rick Lloyd had recommended Mr. Bonwick's services to him.

Tom Lloyd's and Paul Bonwick's discussions culminated in a meeting on July 26, 2012, with BLT Construction Services Inc., the company that constructed Sprung structures in Ontario. At the meeting, Mr. Bonwick offered to promote Sprung structures to councillors and community leaders. In return, BLT agreed that, if it secured a contract with the Town, it would pay Mr. Bonwick's company Green Leaf a percentage of the overall contract as a success fee. Approximately one month later, after Council

decided to purchase and construct two Sprung facilities, BLT paid Green Leaf \$756,740.42 (including HST).

Abby Stec's Work for Paul Bonwick

Abby Stec testified that she first encountered Paul Bonwick sometime after 1991, when he was a member of Parliament. In 2011, Mr. Bonwick became involved in discussions about a Pretty River Academy project to implement an environmental education program that might involve, among other things, installing solar energy panels at the school. Ed Houghton was also involved in those discussions, as were others, including Councillor Kevin Lloyd.

Ms. Stec arranged to meet with Sprung's Tom Lloyd in June 2011 to find out if the school could install solar panels on a Sprung structure. Ms. Stec informed Mr. Bonwick and Mr. Houghton about the meeting by email. Neither Mr. Bonwick nor Mr. Houghton could recall discussing the matter with Ms. Stec. Tom Lloyd testified that he did not know who Ed Houghton or Paul Bonwick were at this time.

Compenso Communications

Through her discussions with Mr. Bonwick in 2011 at the Pretty River Academy, Ms. Stec learned that Compenso Communications Inc. was a political lobbyist and communications company owned by Mr. Bonwick. She left the school in October 2011 to join Compenso as a consultant focusing on the solar attic vent business (see Part One, Chapter 5). Her title at Compenso was "senior associate." By June 2012, she had the title president and CEO at another of Mr. Bonwick's companies – Green Leaf Distribution Inc.

Green Leaf Distribution

In early 2012, Mr. Bonwick was using the "Green Leaf" business name in conjunction with his work on the solar attic vent project. In May 2012, Mr. Bonwick became the sole shareholder of a corporation that would go on to formally become Green Leaf Distribution Inc. Ms. Stec also began working

under the Green Leaf banner, identifying herself as Green Leaf’s managing director in May 2012.

Mr. Bonwick testified that Green Leaf distributed environmental products, with an initial focus on solar attic vents and other solar energy initiatives. Ms. Stec testified that Mr. Bonwick intended to use Green Leaf to distribute his own solar attic vents after he parted ways with International Solar Solutions Inc.

Mr. Houghton, Collus Power Corporation (and, subsequently, Collus PowerStream Corp.), and Deputy Mayor Lloyd assisted Green Leaf’s solar attic vent business from time to time.

In the summer of 2012, Green Leaf conducted a door-to-door sales program with Collus’s assistance. Collus allowed Green Leaf’s salespeople to use the Collus logo. Collus also included advertisements for Green Leaf vents in its customer mailings.

In April 2012, Mr. Bonwick sent Mr. Houghton memos that projected Green Leaf’s profit from the door-to-door sales would be \$13,600.

On June 6, 2012 Deputy Mayor Lloyd asked the Collingwood Downtown Business Improvement Area to include Green Leaf in its farmers’ market, describing it as a “Collus / Town / PowerStream initiative,” forwarding his request and the response he received to Mr. Bonwick.

Green Leaf was involved in other environmental initiatives. Ms. Stec said she used it as a vehicle to promote her work in environmentally sustainable construction as a “LEED-accredited professional.” LEED (leadership in energy and environmental design) is an independent rating system that certifies buildings as designed and built to specific environmental criteria. There are four levels of LEED certification: certified, silver, gold, and platinum. Green Leaf also manufactured a compost deodorizer, which it marketed to Simcoe County.

Ms. Stec purchased a 20 percent interest in Green Leaf on June 19, 2012. She testified that her “decision was predicated on – on both Mr. Bonwick and possibly Mr. Houghton becoming a partner after he retired.” She knew Mr. Bonwick very much wanted Mr. Houghton to join the company. However, Ms. Stec said, Mr. Bonwick made it clear that Mr. Houghton could not

* Ms. Stec testified that, as such a professional, she was qualified to administer the documents required to apply for a LEED designation.

do so until he retired “because it would have been a conflict with his role at Collus.”

Ms. Stec became Green Leaf's president and CEO in June 2012. Mr. Bonwick gave her these titles without any advance discussion or notice. He simply advised her of the fact while they were completing a partnership agreement. These new titles did not bring any changes to Ms. Stec's day-to-day involvement in the company – her role and compensation remained the same. She testified that she considered the titles as “more of a placeholder than a title.”

Despite assigning these titles to Ms. Stec, Mr. Bonwick also held himself out as Green Leaf's president. For example, on August 12, 2012, Mr. Bonwick signed Green Leaf's corporate documents as “president.” Ms. Stec explained at the hearings that Mr. Bonwick did not actively participate in Green Leaf's business, and she stated that “he was more of an advisor.” As I discuss in more detail below, while that may have been true for some aspects of Green Leaf's business, Mr. Bonwick continued to use the company when it was to his advantage to do so.

Introduction to Tom Lloyd and Sprung

Tom Lloyd, Sprung Structures' regional business development manager responsible for Ontario, contacted Ms. Stec in June 2012. Ms. Stec testified that she met with Mr. Lloyd and told him about Green Leaf's business. Mr. Lloyd, she said, indicated that Green Leaf would be a great manufacturer's representative for Sprung.* During that discussion, Mr. Lloyd explained the commission that Sprung paid to its manufacturer's representatives. He advised Ms. Stec that there would be no commission available for the Collingwood projects because another manufacturer's representative, Pat Mills, was already set to receive it. He also explained that Sprung paid commission only on the Sprung portion of the project – it did not pay a commission related to the construction of the structures.

Ms. Stec testified that she took Tom Lloyd to meet Mr. Bonwick that

* Tom Lloyd testified that manufacturer's representatives were Sprung's commissioned salespeople.

same day. She recalled Mr. Bonwick explaining Compensos's business to Mr. Lloyd. Ms. Stec discussed the manufacturer's representative opportunity with Mr. Bonwick. She told the Inquiry that Mr. Bonwick thought it was a good idea, and that they discussed the possibility of using Sprung structures for the Town's pool and arena. She explained to him that there would be no commission from Sprung for recreational facility projects with the Town.

Tom Lloyd recalled talking with Ms. Stec about having her and Mr. Bonwick assist with the Collingwood recreational facilities and become involved on a "broader scope outside of Collingwood." Mr. Lloyd testified that he had lunch with Ms. Stec on June 29, met with her and Mr. Bonwick on July 11, and spoke with Mr. Bonwick "two (2) to three (3)" times thereafter. Although Mr. Lloyd could not be definitive about the timing of his conversations with Mr. Bonwick, he stated that they discussed "why Sprung and Green Leaf could be a great partnership going forward for referring business back and forth." He said it was "becoming very obvious" that, if Collingwood chose to proceed with Sprung recreational facilities, it would do so through BLT Construction Services Inc., the company that built most of the Sprung structures in Ontario.

BLT Construction Services Inc. is a construction company. As I discuss below, the firm had a mutual referral arrangement with Sprung that involved Sprung referring Ontario customers to BLT to construct the fabric buildings.

Mr. Lloyd said in his evidence: "[W]e both decided it'd be much better to form a – call it a three (3) way alliance, BLT, Sprung, Green Leaf." Mr. Lloyd testified that Mr. Bonwick explained that he could "help Collingwood make a decision," and that he could also help Sprung penetrate the "many, many" different communities that Sprung may not have access to.

Mr. Lloyd did not understand at that time what Mr. Bonwick was proposing to do, but he saw Mr. Bonwick as a welcome member of the team because members of the community had highly recommended him. When pressed to identify who spoke highly of Mr. Bonwick, Tom Lloyd identified Deputy Mayor Rick Lloyd, Councillor Kevin Lloyd, and acting CAO Ed Houghton. He specifically recalled the deputy mayor recommending Mr. Bonwick before their meeting. He could not recall when he spoke with Kevin Lloyd or Mr. Houghton.

Mr. Bonwick testified that Ms. Stec introduced him to Tom Lloyd. At

that meeting, he recalled, Mr. Lloyd explained Sprung's products and business, and advised that he wanted Sprung to become more active in Ontario. Mr. Bonwick and Mr. Lloyd agreed to follow up "in the near future." Mr. Bonwick could not recall if, at this time, Ms. Stec was a manufacturer's representative for Sprung or was considering becoming one. He acknowledged in his evidence that, "in my discussion with Mr. Lloyd, it's entirely possible that we may have – or he may have introduced the idea of becoming much more engaged – in us becoming much more engaged in the Collingwood initiative."

Discussions with Sprung

After their introductory meeting, Mr. Bonwick and Mr. Lloyd discussed Mr. Bonwick's potential involvement in the Collingwood recreational facility projects.

Mr. Lloyd, who testified that he had a "very brief" discussion with Mr. Bonwick regarding a potential engagement with Sprung, stated that he explained that Sprung manufacturer's representative Pat Mills had already registered the Collingwood projects and was not willing to split his commission with Mr. Bonwick. Mr. Lloyd also testified that Mr. Bonwick "recognized quickly that the Sprung is a component of a much larger project, and it was probably a good idea to go directly with BLT."

Mr. Bonwick did not recall having any discussions with Mr. Lloyd about dividing the Sprung commission on the Town's recreational facilities with anyone.

Discussions Among Deputy Mayor Lloyd, Ms. Stec, and Mr. Bonwick

About Green Leaf

Deputy Mayor Rick Lloyd met with Ms. Stec and Mr. Bonwick on June 20. The purpose of the meeting was to discuss a compost-deodorizing product that Green Leaf manufactured.

Mr. Lloyd recalled meeting with Mr. Bonwick and Ms. Stec to discuss Green Leaf's request to present its compost deodorizer to Simcoe County. He maintained that he did not know Mr. Bonwick had a financial interest in Green Leaf and said he believed that Mr. Bonwick was "just helping Abby." He also testified that he did not ask if Mr. Bonwick had a financial interest in Green Leaf. Mr. Lloyd stated that he did not learn Mr. Bonwick was associated with Green Leaf until the CBC published investigative documents from the Ontario Provincial Police in June 2018.*

Although the meeting occurred during a period when, according to Rick Lloyd's testimony, he "spoke to everybody that would listen" about Sprung, Mr. Lloyd did not recall discussing the topic at this meeting, noting that if it was raised, "it would have just been off the cuff."

About Sprung

Ms. Stec also recalled attending a brief meeting with Mr. Bonwick and Deputy Mayor Lloyd to discuss Sprung "very shortly" after her meeting with Tom Lloyd. She testified that the deputy mayor "got very excited about the prospect and – and wanted to definitely pursue something in that regard." Neither Rick Lloyd nor Paul Bonwick recalled this meeting.

Rick Lloyd also denied discussing Sprung with Mr. Bonwick during the summer of 2012, although he was "sure" that he spoke with Mr. Bonwick about Mayor Cooper's thoughts on how to proceed with the recreational facilities. When pressed on this evidence, Mr. Lloyd responded: "There's no reason why I wouldn't, but there's specifically when you pick out an individual, I don't know that I spoke to him any more than I spoke to anybody on the street that would listen to me. I spoke to everybody."

Whether anyone at this meeting raised the possibility of Sprung hiring Mr. Bonwick, I am satisfied that Deputy Mayor Lloyd discussed Sprung with

* On June 19, 2018, CBC News published Ontario Provincial Police investigative documents relating to Council's decision to purchase and construct the Sprung facilities. The documents included an "Information to Obtain a Production Order" sworn by Detective Constable Marc Lapointe on July 23, 2014. The covering page to the OPP investigative documents stated: *** This document contains allegations that have not been tested in court. ***

Mr. Bonwick shortly after learning about the company at a June conference in Saskatoon (see Part Two, Chapter 4). By his admission, the deputy mayor was talking with everybody. There was no reason not to include his friend Mr. Bonwick in these discussions, a person with whom Deputy Mayor Lloyd regularly spoke about Town business.

Deputy Mayor Lloyd's Recommendation to Sprung

Sprung's Tom Lloyd testified that Deputy Mayor Rick Lloyd recommended Mr. Bonwick to him sometime between July 11 and 26, informing him that Mr. Bonwick was "just as passionate as he was" about new recreational facilities for the Town. According to Tom Lloyd, the deputy mayor said it would be great to involve Mr. Bonwick in the process. Tom Lloyd testified that the deputy mayor told him: "Mr. Bonwick could put the ball in the end zone ... Touchdown."

Mr. Bonwick stated in his evidence that he was not aware that Rick Lloyd had recommended his services to Sprung.

Rick Lloyd did not recall telling Tom Lloyd that it would be great to get Mr. Bonwick involved in the recreational facility process. He also did not recall informing anyone that Mr. Bonwick could be helpful on the Collingwood projects before Council made its decision on August 27, 2012. In response to questions about whether he recommended Mr. Bonwick to Sprung, Rick Lloyd testified: "I can assure you one thing. Positively, I would not have said anything about a touchdown. That's not something I would say." He agreed, however, that he could have told Tom Lloyd that Mr. Bonwick was knowledgeable and intelligent, knew a lot of people, and could be helpful.

I find that Deputy Mayor Rick Lloyd recommended Paul Bonwick to Tom Lloyd before July 26, 2012.

The deputy mayor's recommendation carried weight with Sprung. Tom Lloyd testified that Mr. Bonwick was "a welcome member to the team" based on recommendations from the deputy mayor and others. He introduced Mr. Bonwick to another member of the team: BLT Construction Services Inc.

Relationship Between BLT and Sprung

Although Sprung marketed, engineered, and manufactured the materials for its fabric structures, it did not erect the structures or construct any other components that might be included with the structure (for instance, bleachers, change rooms, or ice pads). Sprung referred customers in Ontario to the construction company BLT for construction of its structures.

Dave Barrow, BLT's executive vice-president, testified that, before 2012, BLT had constructed several Sprung structures and the two companies had a "handshake agreement" whereby Sprung would refer its customers to BLT as a builder. BLT, in turn, recommended Sprung to potential clients who might be interested in either fabric or pre-engineered steel buildings.

Mr. Barrow testified that most of the Sprung-BLT projects were "turnkey," meaning that BLT "put the shovel into the ground and we give you it at the end of product to use." He also testified that BLT's role in a turnkey project would be "the full design and build of the structures." Sprung's role, he indicated, would be "the structure itself and the engineering of the structure itself."

Ron Martin, Collingwood's deputy chief building official, explained the design-build concept as,

an owner ... [b]asically says to a company or a firm that we would like to build this and that firm takes almost what I describe as a project manager they become that person they take it from A to Z ... The idea of that is for an owner or client that they are going to take care of all – all of the tendering and the processing and hiring of the consultant.

Dave McNalty, the Town's manager of fleet, facilities and purchasing, indicated that, with a design-build concept, the consulting and engineering work is "baked" into the price you are being offered.

On February 28, 2012, Sprung and BLT formalized their handshake agreement by entering into a "strategic alliance agreement." According to that agreement, Sprung would refer all clients "seeking a turn key approach" exclusively to BLT. BLT would then enter into a contract directly with the customer for the construction of the Sprung structure.

Tom Lloyd testified that, under this arrangement, BLT typically purchased the fabric structure directly from Sprung. BLT would then include the cost of the structure in the flat fee it charged the clients. BLT charged a markup on all the materials and services it provided. The strategic alliance agreement did not limit what BLT could charge for a Sprung structure. BLT vice-president Dave Barrow testified that BLT typically charged a markup of between 15 and 18 percent.

Tom Lloyd testified that, while Sprung always referred customers to BLT, Sprung did not require its customers to use BLT. If the customer used another builder, or constructed the building itself, the customer could buy the fabric structure directly from Sprung without a markup. Mr. Barrow testified that it was uncommon for customers to buy directly from Sprung, but that, if a direct purchase was made, BLT would consult on the construction for a fee. Mr. Lloyd told the Inquiry that BLT had constructed approximately 80 percent of the Sprung structures in Ontario.

Tom Lloyd testified that by 2012, Sprung structures had been used for three arenas and “three to five pools,” although he could recall only the location of two of the pools. BLT, however, had never built a Sprung arena or pool.

Mr. Bonwick's Introduction to BLT

Mr. Barrow testified that BLT did not actively market Sprung structures and usually became involved in a potential project after Sprung made initial contact with a prospective client.

For Collingwood, Mr. Barrow testified that, in mid to late July 2012, David MacNeil from Sprung first told him about a potential construction project to cover the Town's outdoor pool and either cover the outdoor arena or build a new arena. Shortly after that conversation, Tom Lloyd introduced Mr. Barrow to Abby Stec and Paul Bonwick by email, writing:

Hi Dave,

We are working with Abby Stec and her partner Paul Bonwick on the Collingwood projects. They would like to meet at your office on Thursday

July 26th at 2:00 pm. Please confirm that works with you and/or Mark. Prior to Thursday they would like to have a conference call. Can you please let me know if you are available tomorrow?*

At the time he received this email, Mr. Barrow had never heard about Ms. Stec or Mr. Bonwick.

Mr. Bonwick testified that Tom Lloyd had suggested the meeting as a potential way for Mr. Bonwick to become involved in Sprung's efforts to secure a contract with the Town of Collingwood. He said he was interested in meeting with BLT because, after researching Sprung, he saw an opportunity for Sprung in Collingwood. He also saw an opportunity to create what he described as a "province-wide business model," whereby Green Leaf and BLT would jointly approach other municipalities with proposals to build recreational facilities with Sprung structures. Ms. Stec testified that Collingwood would serve as a "pilot" for this model.

Mr. Bonwick's and Ms. Stec's Meeting with BLT

Mr. Bonwick and Ms. Stec met with Mr. Barrow and Mark Watts, BLT's president, on July 26. Mr. Barrow, Mr. Bonwick, and Ms. Stec testified that they believed Tom Lloyd attended the meeting, although Mr. Lloyd told the Inquiry that he was "75–90 percent sure" he was not present.

On the day of the meeting, Mr. Houghton and Mr. Bonwick spoke on the phone six times. Neither of them recalled the content of those discussions, but both denied they talked about Mr. Bonwick's meeting with BLT.

Mr. Barrow, Ms. Stec, and Mr. Bonwick testified about the content of the July 26 meeting. They recalled that, during the meeting, Mr. Bonwick introduced himself and discussed Collingwood's history with recreational facilities. Mr. Bonwick then advised BLT that, if the company wanted to secure a contract with the Town, it would need to convince the Town that Sprung was an easy, affordable, quick, and environmentally friendly solution to the Town's needs. Mr. Bonwick said that Green Leaf could assist BLT in these efforts.

* The Inquiry was not able to confirm that a conference call took place.

Mr. Bonwick and Ms. Stec testified that, during Mr. Bonwick's presentation, he stated that BLT might have the opportunity to obtain a contract for the arena and pool through sole sourcing, as opposed to a competitive tender process. Ms. Stec further testified that, before the meeting, Mr. Bonwick had indicated to her that the recreational facilities could be "sole sourced." Sole sourcing occurred when the Town entered into a contract without going through a competitive tender. The idea that sole sourcing was possible took Ms. Stec by surprise because she thought a municipality would be required to tender such a significant project. When Mr. Bonwick cross-examined Ms. Stec on her testimony, she agreed with his suggestion that, while sole sourcing was discussed, Mr. Bonwick never guaranteed the project would be sole sourced.

In their evidence, Ms. Stec and Mr. Barrow both agreed with Mr. Bonwick's suggestion that he also presented his proposal for Green Leaf and BLT to work together to market Sprung structures to other municipalities in the province.

Ms. Stec testified that she spoke at the meeting about Green Leaf being an environmental company and the potential for her to assist BLT in obtaining LEED certification for its buildings. At the time, Ms. Stec believed Sprung structures already had a LEED silver rating. As I discuss in Part Two, Chapter 11, this was not the case.

Mr. Barrow testified that he left the meeting believing there was a "handshake agreement" that BLT would pay Green Leaf a fee to lobby Collingwood's Council to build Sprung structures. He explained that the actual amount of the fee was not discussed, although he understood it would be a percentage of the overall value of any contract BLT secured. Mr. Barrow also testified that, at some point, Tom Lloyd told Mr. Barrow that he thought it would be a good idea for BLT to hire Mr. Bonwick because he (Mr. Bonwick) "could get us inside of doors we just couldn't get inside of."

In his evidence, Mr. Bonwick rejected the notion that he agreed to "lobby" Council in exchange for a success fee.* Rather, he testified that he would act as a "lead on the ground" to speak positively to Council and community leaders about Sprung structures. He also said he would deal with "significant issues that might come up." When he was cross-examined by counsel for the

* For this Report, a "success fee" is a payment made when a defined result is achieved.

Town of Collingwood, Mr. Bonwick described his role as follows: “I would be able to engage at opportunities that were available and promote the idea that Collingwood Council had an option in front of them to embrace that would have been a third of the price or less that would allow them to deliver.”

With respect to the fee, Mr. Bonwick confirmed that no specific fee was set, although he indicated to BLT that, if the Town did proceed with a request for proposal, the process could be extended and as a result, he thought, the fee should be in the same range as commissions paid to real estate agents.

Ms. Stec testified that, at the end of the meeting, Mr. Bonwick told BLT that she would be the contact person going forward. Mr. Bonwick confirmed that Ms. Stec’s role was to be the “day-to-day administrative contact.” This direction was one of the early indications that Mr. Bonwick intended to use Ms. Stec and the Green Leaf company to conceal his work for BLT.

Non-disclosure of Mr. Bonwick’s Relationship to the Mayor

Tom Lloyd testified that, before introducing BLT to Mr. Bonwick, he learned Mr. Bonwick was the brother of Collingwood’s mayor. He explained that the sibling relationship was not a concern for Sprung because, by this point, the Town was likely to contract with BLT and “the decision would now go over to BLT.” Mr. Lloyd testified that, later on, he saw Mr. Bonwick’s and Ms. Cooper’s relationship as “more of a coincidence” that did not give him any conflict of interest concerns.

Mr. Bonwick, however, did not disclose to BLT at the July 26 meeting that his sister was the mayor. Mr. Barrow testified that he learned this fact later on, but could not recall if it was before or after BLT and the Town signed the construction contract for the Sprung arena and pool at the end of August 2012. He testified that the information that Mayor Cooper and Mr. Bonwick were siblings did not cause him concern, “but it was definitely surprising.”

Mr. Bonwick testified that he did not disclose that the mayor was his sister because he wanted to be hired on his own merit and not based on his family connections.

I do not accept this evidence.

Rather, I am satisfied that Mr. Bonwick did not disclose the relationship because he wanted to avoid discussions like those he previously had with PowerStream about whether he should disclose his retainer to his sister or the Town of Collingwood.

Mr. Bonwick told the Inquiry that he did not treat BLT like PowerStream for three reasons. First, he did not have as much of a public profile while working for BLT. I discuss this point further in Part Two, Chapter 9, but Mr. Bonwick testified that, when he spoke to councillors and others in favour of Sprung, he deliberately did not disclose that he would be paid by BLT if it secured a contract. Second, he testified that his experience with PowerStream taught him there was no conflict under the *Municipal Conflict of Interest Act*, so there was no concern about his involvement. Finally, Mr. Bonwick explained that BLT was a private entity, whereas PowerStream was quasi-public.

I also do not accept any of these justifications.

In hindsight, Mr. Bonwick expressed a measure of reservation about his decision. In his closing submissions, he agreed that he should have handled disclosure “in a much more robust manner,” similar to the Collus share transaction. To the extent that Mr. Bonwick’s comment in his closing indicates that disclosure of his relationship to the mayor would have permitted his client, BLT Construction Inc., to address how it wanted to handle the issue, I agree with it.

WGD Architects and Arena Options

After the July 16, 2012, Council meeting, Director of Parks, Recreation and Culture Marta Proctor and Manager of Fleet, Facilities and Purchasing Dave McNalty arranged for the Town to retain the architectural firm WGD Architects Inc. to analyze two options for a single-pad arena: a fabric membrane structure, and a pre-engineered steel building. Richard Dabrus, principal in charge of WGD, testified that pre-engineered steel buildings became popular beginning in the 1980s as a cost-effective alternative to other building types. WGD was not asked to consider the pool.

WGD's work was constrained. Mr. McNalty told WGD not to contact Sprung Instant Structures directly. The direction came from Deputy Mayor Rick Lloyd, who instructed acting Chief Administrative Officer (CAO) Ed Houghton to act as the Town's sole contact with Sprung. The deputy mayor's direction prevented Town staff from providing Council with an objective assessment of the arena options. WGD's work was also limited by the short timeline required to meet the August 27 staff report delivery date that Mr. Houghton accepted at the July 16 Council meeting (see Part Two, Chapter 5).

On August 17, WGD delivered its report to the Town. The company estimated that a fabric arena would cost approximately \$500,000 less than one of pre-engineered steel, but stated that the latter would be better insulated. Mr. Houghton did not present WGD's conclusions to Council at the August 27 Council meeting. Instead, he questioned WGD's role throughout the process.

Retaining WGD to Assess Options

At the department heads' meeting the day following Council's July 16 meeting, Ms. Proctor suggested that the Town engage the architectural firm WGD Architects Inc. She wanted WGD to assist in preparing estimates for a single ice pad and enclosure for the Centennial Pool. Council had requested the estimates to be completed by August 27. As I discuss below, WGD was ultimately not asked to look at the pool.

Mr. McNalty testified that both he and Ms. Proctor believed it was logical to hire WGD because the firm had already prepared the estimates for the Central Park Steering Committee's proposal (see Part Two, Chapter 2). As well, WGD had architectural, engineering, and design resources that the Town did not have in house. As I explain in Part Two, Chapter 2, WGD provided the committee with preliminary design options and cost estimates for a multi-use facility. WGD was selected for this project following a competitive RFP. It was also the architect for the Town's library, which had been built in 2010 and had obtained a LEED gold rating.*

Mr. Houghton did not attend the July 17 department heads' meeting. He testified that he did not know staff had retained WGD, though he was aware that Councillor Joe Gardhouse had suggested Council hire a consultant to assist with the staff report.

Over the next month, Mr. Houghton asked staff on three occasions what WGD was doing for the staff report. Mr. Houghton told the Inquiry that his confusion stemmed from the fact that he did not attend this department heads' meeting. Although Mr. Houghton initially may have been uncertain about WGD's role, staff responded to each of his queries, explaining WGD's role. I do not accept that Mr. Houghton repeatedly questioned WGD's involvement in the staff report because he did not understand its role. Rather, Mr. Houghton sought to limit the impact of WGD's work on the staff report. He was successful.

On July 18, Ms. Proctor spoke with Richard Dabrus, principal in charge

* LEED (leadership in energy and environmental design) is an independent rating system that certifies buildings as designed and built to specific environmental criteria. There are four levels of LEED certification: certified, silver, gold, and platinum.

of WGD, about the new project. Mr. Dabrus testified that the conversation was “a little bit panicked” and it was clear this was an urgent matter for the Town. Mr. Dabrus recalled that in this conversation, Ms. Proctor asked WGD to examine different locations for the arena within Central Park, rather than the location WGD had identified when it completed its feasibility study for the Central Park Steering Committee. Mr. Dabrus told the Inquiry that a new location within Central Park “did not make a lot of sense, but we weren’t really in a position to question it.” He explained that changing the location meant moving away from the opportunity to build a multi-use facility.

After his conversation, Mr. Dabrus emailed Ms. Proctor to inform her that he would be on vacation but that Brian Gregersen, another architect at WGD, was available to assist. At the hearings, Mr. Dabrus testified that he and Mr. Gregersen served as the firm’s liaisons with the Town of Collingwood. WGD also used an independent consultant, Tom Ingersoll, to prepare cost estimates.

Scope of Work and Terms of Reference

On July 19, Mr. McNalty sent Ms. Proctor draft terms of reference for WGD’s work. He sent an updated version to Brian Gregersen at WGD the next day. Mr. McNalty testified that the purpose of the document was to direct WGD on the types of arenas the Town wanted the firm to assess. The document identified three options for WGD to consider “as a minimum”:

- “Proposed Central Park Redevelopment Project Components (as presented)”
- “Initial Phase of Single Pad Arena, necessary park improvements with future option to combine into overall redevelopment concept”
- “Upgrade of the Eddie Bush Memorial Arena beyond ten (10) years”

The single-pad arena option was described as “new year round Ice Arena in Central Park that may be phased into the broader concept” that could be a “Fabric Membrane (Sprung, or equivalent)” or “Other affordable structures.” The document asked WGD to “identify displaced amenities and costs

associated with redevelopment” and stated that “Park and Site development shall be on an as needed basis in conjunction with the various phases.”

The cost listed for the “Proposed Central Park Development Project Components” was listed as \$35 million. No costs were included for the other two options.

The terms of reference stated that the feasibility of these options “must be presented to Council on August 27, 2012” and that the “Town is requesting a draft report no later than August 15, 2012.”

The terms of reference also directed WGD to assess upgrading the Eddie Bush Memorial Arena to expand its lifespan beyond 10 years. As part of this work, the Town asked WGD to assist with an application for a grant from the Community Infrastructure Improvement Fund.

Explicit Mention of Sprung

Mr. McNalty testified that he prepared WGD’s terms of reference with Ms. Proctor. He explained that WGD was asked to compare the above options “at a minimum” because he and Ms. Proctor did not want to preclude any other options, although none were ultimately identified. He also stated that he did not expect WGD to do any further work on the multi-use facility option beyond what the firm had already done for the Steering Committee. He said this option “became less important” after Council voted on July 16 to direct staff to investigate covering the outdoor pool since, if that option was pursued, a pool would not be needed at Central Park. Mr. Dabrus also understood that the Town was not asking WGD to revisit the work it had already done on a multi-use facility.

Mr. McNalty further testified that Sprung was mentioned explicitly in the terms of reference because, at the time, it was the only company he knew of that offered a fabric structure which was insulated and could be used for recreational facilities.

Before being introduced to Sprung in June 2012, Mr. McNalty was familiar with what he called “agricultural-style” fabric buildings, which were primarily used for farm purposes. Although not insulated, these buildings could be modified to include insulation. In or around 2009 or 2010, Mr. McNalty had investigated whether an “agricultural-style” fabric building

could be used to cover the outdoor ice rink at Central Park. He concluded that it did not meet building code requirements, including the need to have a sprinkler system.

Mr. McNalty stated in his evidence that Sprung buildings, in contrast to agricultural-style buildings, had a “robust design” that was suitable for sports facilities and satisfied building code requirements. His understanding of Sprung structures was based on his meetings with Sprung and the information the company had provided. Mr. McNalty testified that, at those meetings, he asked Sprung a series of questions to ensure its buildings would satisfy the building code. Although he could not recall the specific questions, he stated that, as a result of his inquiries, he concluded that Sprung structures did not have the same deficiencies as agricultural-style buildings.

Mr. McNalty stated that he did not believe other companies could offer a similar product because he did not find any such companies when he conducted internet searches. When the Town engaged WGD, he testified, he explained the difference between an agricultural-style fabric building and a Sprung and that the Town was interested in a Sprung-style fabric structure. He did not recall having further discussions with WGD about whether it was aware of any companies that provided a comparable product, but he “would have welcomed that if they had suggested it.”

Mr. Dabrus testified that it was not normal practice for a client to ask WGD to look at a specific supplier, in this case Sprung. He explained that there is a “commonly held belief” that public sector clients should focus on performance standards, not a particular product. As an example, he said that if the client wants the flooring in the dressing rooms to be safe for skates, that should be specified; but the client should not specify a particular manufacturer.

Mr. Dabrus also testified that the Town did not provide WGD with any specific performance standards or design components. Nevertheless, WGD was able to prepare estimates because the firm had “done a lot of arenas, so we just naturally know what’s ... going in them and where things need to go.” Mr. McNalty testified that the only information WGD received regarding the design of the arena was contained in the terms of reference.

At the hearings, Mr. Dabrus described the Town’s terms of reference as a “moving target” and testified that it “took a great deal of discussion

to work out what was really being asked.” WGD ultimately analyzed two potential arena construction types: fabric (such as a Sprung structure), and pre-engineered steel. He further testified that WGD analyzed pre-engineered steel buildings because the terms of reference directed the company to consider “other affordable structures.” Mr. Dabrus stated that pre-engineered steel buildings became popular in the 1980s because they were cost-effective as compared with other building types.

WGD was not asked to examine covering the outdoor pool with a fabric building. Mr. McNalty testified that, since Council asked staff to look only into fabric structures for the pool, in his mind the only work involved was meeting with Sprung, determining the components of the pool, and then developing detailed timelines and estimates. Mr. McNalty explained that he believed it was not necessary for staff to investigate other fabric-structure manufacturers because, based on his internet research, Sprung was the sole company that could build fabric recreational facilities without modifications.

Restrictions Imposed by the Timeline

Mr. Dabrus testified that the August 15 deadline was “an extremely short fuse” that limited WGD’s work for the Town. For example, the Town requested WGD to complete energy modelling, an analysis that would have helped the Town understand the expected energy use of each type of arena. Mr. Dabrus told the Inquiry that a month was not sufficient for completing that task. He also testified that, as a result of the timeline, WGD could not engage in the usual “iterative process” with the Town, where two parties would go back and forth over WGD’s work and make any modifications requested by the Town.

Deputy Mayor’s Direction That Ed Houghton Be Sprung’s Sole Contact

On July 24, Treasurer Marjory Leonard sent acting CAO Ed Houghton an update on Dave McNalty’s work with WGD. In her email, she noted that she asked Mr. McNalty to have WGD price a “bricks and mortar building” and a

“pre-fabricated steel structure” for the arena, as well as estimate the operating costs. She indicated that WGD would “[l]eave the Sprung building pricing for now” until the Executive Management Committee and Mr. McNalty met with Sprung. Ms. Leonard added that once WGD provided pricing for the building and operating costs, “somebody (Ed, Dave, Dave and the Mgmt Team) will contact Sprung to get pricing to ensure that we are comparing apples to apples.” Ms. Leonard further wrote that work on enclosing the outdoor pool could potentially involve David Wood from Envision-Tatham, a landscape architecture firm.

Mr. Houghton replied to Ms. Leonard’s email:

I think there may be two things:

The first is we need to have the operational information for the bricks and mortar building and the structural steel building (actually I’m not sure where this building fits into the equation but I may have missed it). Secondly I think that the DM was pretty clear that he didn’t want David Wood working on anything at this time.

Ms. Leonard replied that Ed was right and “it was a mistake to include Dave Wood.”

Larry Irwin, a member of the Executive Management Committee, also replied to Mr. Houghton:

For what is worth ... I also got the impression that the DM (and likely others on Council) were really looking for us to utilize the information we already have from previous studies and reports. Including the new sprung building info in conjunction with our in house staff (GIS / Planning / Parks & Rec. and Engineering) to come up with a very good thumbnail concept and costing for Aug 27th report to Council.

At that point if it is truly accepted by Council then we will need to have formal design building work undertaken.

Mr. Houghton responded: “I think you are right. [Councillor] Joe [Gardhouse] did mention getting some help which Marjory is doing by using the architects to help site the ice pads.”

Mr. McNalty replied in the email chain that WGD was looking at pre-engineered steel buildings in response to the request in the terms of reference that WGD look at a “other affordable structures.” He noted that this was in contrast to the “bricks and mortar approach,” which he said was essentially the first phase of the Steering Committee’s proposal for a multi-use facility. Mr. McNalty also wrote:

Presumably, I’m still okay to carry on the discussion with Sprung on covering Centennial Pool, and I will discuss the rest of the Heritage Park things, to identify any concerns, with Brian / JP.

Regarding the pre-engineered steel building, Mr. Houghton replied: “What do you mean our terms of reference?” Mr. McNalty responded that the terms of reference was “the four page document that you received yesterday and the table within was to guide WGD’s work and our thoughts along the way.” Although the Executive Management Committee was copied on all the above exchanges, Mr. Houghton sent a final response solely to Mr. McNalty: “The last point I should make is that I will be the contact person with Sprung. The Deputy Mayor made that perfectly clear with me on the week-end.” Mr. McNalty acknowledged the direction, responding: “Okay. Got it.”

Mr. McNalty testified that he understood the direction, but that it was unusual for the CAO to be the only contact with a supplier, explaining that it was usually more efficient for those communications to run through lower-level staff.

Mr. McNalty implemented Mr. Houghton’s directions immediately, advising WGD the next day that “Sprung is not to be contacted at this time.” This instruction interfered with WGD’s ability to conduct a comprehensive comparison of the arena options, as I discuss further.

Mr. Houghton testified that Deputy Mayor Lloyd first directed him to act as the Town’s sole contact with Sprung after they had a conference call with Sprung on June 21.

As I explain in Part Two, Chapter 4, Mr. Houghton said that he and the deputy mayor learned on this call that the Town’s manager of recreational facilities had met with Sprung two days earlier. According to Mr. Houghton, Deputy Mayor Lloyd told him at that time that “the information should

flow through” him [Mr. Houghton]. Mr. Houghton told the Inquiry that the deputy mayor raised the matter again the weekend before his July 25 email to Mr. McNalty.

Mr. Lloyd testified that he did not know other staff had been in contact with Sprung in June 2012. He agreed with suggestions from Mr. Houghton’s counsel that he directed Mr. Houghton’s office to be Sprung’s point of contact. When asked why he issued that direction, Mr. Lloyd testified that he “felt it was imperative that the CAO’s office was a point of – point of contact for this project” and explained that “it didn’t mean that other people couldn’t be in touch with Sprung” but that “everything would go through the ... CAO’s office.”

Mr. Houghton said in his evidence that he pushed back on the deputy mayor’s direction, asking if someone else could serve as the contact person, but Deputy Mayor Lloyd insisted it be the CAO. By contrast, Rick Lloyd told the Inquiry that Mr. Houghton was “very much in ... support” of his direction.

I do not accept Mr. Houghton’s evidence that the deputy mayor first instructed him to act as Sprung’s sole Town contact in June, and then again a month later. The evidence demonstrates that Mr. Houghton followed the deputy mayor’s instructions on receiving them. Further, the deputy mayor would not have waited a month to reiterate his instructions to Mr. Houghton. If he believed his directions were not being followed, he would have done something about it immediately.

Nor do I accept Mr. Houghton’s evidence that he sought the deputy mayor’s permission to delegate the role to another member of staff. Mr. Houghton delegated other work relating to recreational facilities throughout the summer without asking the deputy mayor permission.

Mr. Houghton sought to justify his compliance with the deputy mayor’s direction, explaining: “I’m not trying to buck the system. I’m not trying to do anything. I’m trying to fulfill what I’m – the obligations that they’ve asked me to do.”

I do not accept this explanation. Mr. Houghton was an experienced executive who had worked with Town Council for years. He was more than capable of resisting the deputy mayor’s request. Mr. Lloyd himself testified that this was the case, explaining that “Mr. Houghton is a very bright individual, he would have said, no, I don’t think so and it would have been different.”

Even if Mr. Houghton's explanation were true, it would not assist him. As acting chief administrative officer, he was obligated to follow the directions of Council, not the instructions of a single Council member behind closed doors. It was his job to ensure that staff provided the best information to Council and to prevent political interference with staff's work in achieving that objective.

Both Mr. Houghton and Deputy Mayor Lloyd testified that Mr. McNalty misunderstood Mr. Houghton's email. Mr. Houghton explained:

[I]t was not the draconian way of not having anybody speak to Sprung at all. That was never the intent. I would take responsibility. Because David is a guy that takes every one word that you say accurately, I should have said, as I just said, we just need to have – make sure that we facilitate it so if anybody needs anything, it can go through my office and, you know, meetings are set up through that way so that we have control over it.

David's a great guy. I should have been more careful with my wording.

I do not accept that this was a case of being misunderstood. I am satisfied that Mr. Houghton's email to Mr. McNalty accurately described the deputy mayor's direction that Mr. Houghton, the CAO, be Sprung's sole Town contact.

The deputy mayor's direction had at least two damaging effects.

First, it interfered with WGD's ability to provide staff with an accurate comparison of the arena options. Both Mr. McNalty and WGD's Mr. Dabrus testified that WGD's work was impeded by its inability to communicate directly with Sprung.

Second, it created a barrier between staff and Sprung and BLT Construction Services, the company that constructed Sprung structures in Ontario, which impeded staff's ability to investigate Sprung and BLT and verify the information they would ultimately present to Council. To the extent staff wished to obtain information from Sprung or BLT, they needed to go through Mr. Houghton. Mr. Houghton, in turn, was inclined to present Sprung and BLT in a positive light, as will be demonstrated by the changes he oversaw to the staff report.

When the deputy mayor directed Mr. Houghton to be the sole contact

with Sprung, he knew CAO Houghton would present the information he received from Sprung (and, by extension BLT) favourably (see Part Two, Chapter 10). This position was something the deputy mayor described in an email as the “Ed Houghton positive spin,” and I am satisfied that this is the reason the deputy mayor wanted Mr. Houghton to be the sole contact point with Sprung.

Confusion Over WGD’s Role

In the same email chain in which he directed that he be the sole contact with Sprung, Mr. Houghton also questioned the need for WGD’s work, as I discussed above.

Mr. Houghton explained in his testimony that he was asking questions about WGD’s role because he had “been left out of the loop” about the company and it was not clear to him what WGD was doing. This was the first of three instances in which Mr. Houghton questioned the need for WGD’s work.

On August 7, Mr. Houghton raised questions about WGD’s role for a second time. He emailed Dave McNalty about the Central Park staff report, advising that it “must be prepared for the 21st so that it can go to Department Heads.” Mr. McNalty responded that “we have asked WGD to have all information for Central Park back to us by Aug 15. We will have to make sure we have all Sprung information by then as well.” Mr. Houghton replied to Mr. McNalty, “Remind me what WGD is doing again? It seems we may not need them.” Mr. McNalty responded, explaining:

Bricks and mortar arena in Central Park saving two ball diamonds with operating costs – future option to twin. Plus upgrades to Eddie Bush for infrastructure funding application but also to have for information in the report should any arena in Central Park move forward.

Mr. Houghton testified and argued in his closing submission that his confusion stemmed from the fact that he did not attend the July 17 department heads’ meeting at which Ms. Proctor suggested retaining WGD and then was not included on staff’s communications with WGD. Mr. Houghton said this was “not wrong ... but the whole thing was confusing to me.”

Mr. Houghton testified that he did not take any steps to address his confusion, noting: “If I had more hours in the day, I might have tried to do that.”

I do not accept that Mr. Houghton repeatedly questioned WGD’s work out of confusion. Mr. Houghton sought to control the process and was concerned that WGD’s work might interfere with proceeding with Sprung.

The third time Mr. Houghton raised issues regarding WGD’s report was after WGD delivered its final report on August 17, which I discuss below. After Ms. Proctor forwarded the report to Mr. Houghton and the EMC, he wrote: “Is this for Central Park? I was under the impression we told Dave they were to work on Eddie Bush only?”

Ms. Proctor replied: “I wasn’t aware of that and from my discussions with Dave, I don’t think he was either.”

Ms. Leonard also responded:

Ed, my recollection was that in order to compare the costs of a bricks & mortar building and the prefabricated steel structure with Sprung we were using WGD for those estimates. They had the original costings for the brick building and we needed the prefab costings as well.

The next day, Mr. Houghton forwarded the email chain to Mr. McNalty, writing: “I think you and I need to have a discussion and get moving in the same direction.”

Mr. McNalty responded:

I agree that we should discuss it. I’m not sure how you want to present this, and there is already a draft report from Marjory.

No one said that we still didn’t want the costs of a bricks, mortar and steel arena ...

Mr. McNalty testified that he did not know why Mr. Houghton still appeared to be uncertain about what WGD was doing, saying: “[F]rom my perspective, I thought he had been informed.” He did not recall anyone informing Mr. Houghton that WGD was looking only at the Eddie Bush Arena.

Mr. Houghton testified that he was mistaken to believe that WGD was

examining only the upgrades to the Eddie Bush Memorial Arena. He explained that this was his misunderstanding and Mr. McNalty corrected him.

Ms. Proctor testified that her initial hope was that WGD would do a broader feasibility study into options for the arena. She said, however, that “when we tried to outline criteria and what you would normally analyse in a feasibility study, that was being shut down” by Mr. Houghton in direct communication with Mr. McNalty. Mr. McNalty testified that he did not recall Mr. Houghton providing instructions to restrict WGD’s work and said he did not know why Ms. Proctor had that view.

Pressuring WGD for the Report

On August 15, at 4:03 p.m., Marta Proctor emailed Brian Gregersen, Richard Dabrus, and Dave McNalty, writing:

I was speaking with Dave McNalty this afternoon and understand that the information we expected today may be delayed. As originally discussed, we are on a very critical timeline and we need to compile an internal report in at least draft format by the end of the day Monday, with final information completed by end of the day Wednesday.

Can you please advise ASAP what is possible to expedite the information that we require? As stated previously, today was a critical deadline for us and we require your immediate feedback on this matter.

Brian Gregersen at WGD responded that drawings were complete but the building cost estimates and operational cost estimates were delayed, to which Ms. Proctor wrote that WGD “may as well suspend any further work” and requested a call to discuss. Mr. Dabrus replied the following morning and advised that “[W]e will get something to you this morning, we are having trouble with operating costs as the information is so preliminary, but will try.” Ms. Proctor and Mr. Dabrus scheduled a call about the project for that afternoon.

Mr. Dabrus testified that, at this point in time, WGD had prepared a draft

report but was waiting for its independent consultant, Tom Ingersoll, to provide the cost estimates. He noted that “there was a tone through the entire exercise that was very impatient on the Town’s part.”

Mr. Dabrus testified that the “operating costs” in his email referred to the energy modelling that WGD intended to do to estimate the energy efficiency of a pre-engineered steel building as compared with a Sprung structure. Mr. Dabrus testified that WGD did not complete energy modelling because the information required, including the number of windows, the amount of solid wall, and the size and nature of the ice production plant, was not available.

Draft Report

WGD sent the Town an initial draft report on August 16. The draft report discussed the amount of insulation in a pre-engineered steel building and a fabric membrane. A building’s insulation is measured by “R” value. A building with a higher R value is better insulated. WGD wrote:

The normal insulation values for a Pre Engineered sandwich panel structure is R-19 for roofs and R-12 for walls. Membrane structures by their nature have no inherent thermal resistant R value.

Mr. McNalty testified that, when he read this portion of the draft report, he felt “a bit of frustration” because WGD was describing an agricultural-style building (which did not have insulation) as opposed to a Sprung structure (which Sprung said had an R value of R-30). At 9 a.m. on August 17, Mr. McNalty sent WGD a Sprung slide show to clarify that Sprung structures were insulated. In the covering email, Mr. McNalty wrote:

Attached is a brochure on Insulated Fabric Membrane arenas. In terms of thermal performance, their claim is R-30. The aluminum extrusions are placed in the range of 10 – 12 feet apart and between each is outside membrane – 9" insulation – inside membrane. There is no thermal break in the aluminum extrusions, but they are spaced quite far apart.

Remember, you are not to contact the manufacturer in conjunction with this project at this time.

Mr. McNalty said in his evidence that he did not recall why he reminded WGD at this point not to contact Sprung. He agreed that WGD not knowing about the insulative properties of Sprung structures was an example of how Deputy Mayor Lloyd's direction that Mr. Houghton serve as the only contact with Sprung made matters more difficult, and added: "[P]erhaps it seemed unnecessarily so, but that's what it was."

Mr. Dabrus reviewed the materials provided by Mr. McNalty and revised the report. At 1:30 p.m., Mr. Dabrus emailed Mr. McNalty and Ms. Proctor the revisions he made based on the information Mr. McNalty had provided, adding that a full revised report would follow once he had received the cost estimates. Mr. Dabrus's revisions stated that, although membrane structures by their nature had no R value, they could achieve R-30 with certain modifications. The revision also noted that pre-engineered steel buildings could also achieve R-30 by increasing the standard amount of insulation. Mr. McNalty testified that WGD's revision addressed his concern regarding insulation.

WGD was not asked for an opinion on what R value of insulation would be advisable. Mr. McNalty testified that the Town did not ask WGD to estimate the cost of adding additional insulation to make a pre-engineered steel arena R-30.

At the hearings, Mr. Dabrus explained that a pre-engineered building could be as high as R-40, but noted that adding insulation to any type of arena does necessarily lead to a better result. He said: "There's a certain point where ... there's diminishing returns. So we wouldn't have necessarily said that R-30 is going to really – we wouldn't necessarily recommend R-30."

Cost Estimates

At 3:19 p.m. on August 17, WGD received preliminary budgets for the pre-engineered steel and fabric membrane arenas from Mr. Ingersoll, who was preparing the cost estimates. In the covering email, which Mr. Dabrus forwarded to Ms. Proctor and Mr. McNalty, Mr. Ingersoll wrote:

The fabric building is considerably less than a pre-engineered building to purchase and install. That said, some of the drawbacks to a fabric structure would be life cycle costs, maintenance costs, possible cooling requirements for use during the summer months and fire protection. The foundations would be slightly less as well. Based on my review, I feel the overall savings to use a fabric structure would be in the \$450,000 to \$550,000 range.

Mr. Ingersoll estimated that a pre-engineered steel building would cost \$7,632,124.29 and a fabric building would cost \$7,132,124.29. In addition to these amounts, he estimated it would cost \$1,164,281 to develop the site around the arena, which was referred to at the hearings as the “site servicing costs.” Site servicing included sidewalks, parking lots, fencing, and gates. Mr. Dabrus testified that the site-servicing costs would be the same for either type of arena.

Mr. Dabrus stated that he did not believe a pre-engineered building would cost more than a fabric building, but WGD used Mr. Ingersoll’s numbers because he was the costing expert. At the hearings, Mr. Dabrus testified that he has since spoken with suppliers for pre-engineered buildings who say they have outbid Sprung. There was no other evidence before the Inquiry to show that a pre-engineered building could cost less than a Sprung, but that is a question which would have been answered if the recreational facilities had been procured through a competitive tender process.

WGD arrived at these estimates based on the information in the terms of reference document. Mr. McNalty testified that the Town did not provide any further information about the design components the company wanted included. As I discuss in Part Two, Chapter 8, BLT had two meetings with the Town to discuss in detail what to include in the arena in preparing its estimates.

Final Report

On August 17, at 4:23 p.m., WGD sent Ms. Proctor the final version of the WGD report, which included Mr. Ingersoll’s estimate that the difference between

a pre-engineered steel building and a fabric building was approximately \$500,000. The WGD report also provided three options for the location of the new arena.

Comparisons Between Fabric and Pre-engineered Steel

The WGD report compared certain components of pre-engineered steel buildings and fabric membrane buildings. Its conclusions included the following:

- The performance of a pre-engineered steel building with an equivalent amount of insulation to that of a fabric structure would be expected to be superior.
- The warranty for a pre-engineered building's steel panel walls ranged from 20 to 40 years, and the warranty for the roof was 20 years. In comparison, WGD estimated, the membrane that acted as both the wall and the roof of a fabric building would require replacement in "the range of 20 years," which was consistent with the warranties for such buildings.
- There was no difference in mechanical or electrical systems between a pre-engineered structure and an architectural membrane structure.
- The project development timelines would be similar. "As for the erection time of a super structure," the report stated, "it is expected that there would be no difference, leaving only a small advantage to a Membrane Structure in the enclosure of a superstructure."

Concerning the first point, Mr. Dabrus testified that the insulation in a fabric structure is not continuous but is broken by the structure's aluminum supports, which can lead to heat escaping the building in the winter, or entering the building in the summer.

Green Initiatives

In its report, WGD identified a series of green initiatives that the Town could incorporate into the arena to assist it in achieving a LEED silver rating, including use of efficient refrigeration equipment for the ice surface and

heat recovery systems. Where a green initiative would involve additional cost, WGD included an estimate in the report. If the Town incorporated all the green initiatives, the estimated total would be \$1,150,000.

Mr. McNalty testified that WGD identified the green initiatives at the Town's request. He said that, at an early meeting with Sprung, the company told the Town that its structures met the requirements to be certified as LEED silver. As a result, Mr. McNalty wanted WGD to identify what a pre-engineered steel building would need to include in order to reach LEED silver certification. Mr. McNalty testified that he understood the Town would have to incorporate all the green initiatives in the WGD report for a pre-engineered steel building to achieve LEED silver.

Mr. McNalty did not ask WGD about whether Sprung buildings qualified for LEED silver certification. Mr. Dabrus told the Inquiry that he did not believe Sprung buildings inherently qualified for LEED silver status. He explained that LEED is a points system, and a fabric membrane alone would not attain sufficient points to obtain silver status. Rather, both a pre-engineered steel building and a fabric membrane building would need to include green initiatives to achieve LEED silver.

Reaction

Dave McNalty testified that, after WGD addressed the insulation issue, he did not think anything in WGD's report was wrong or inaccurate.

Ms. Proctor testified that she could not recall staff or the Executive Management Committee expressing concerns with WGD's report. She also could not recall staff asking WGD any questions about its report, aside from Mr. McNalty's correspondence with WGD about insulation.

Mr. Houghton testified that, when he reviewed the report, it was "evident" that WGD had not done any review of Sprung fabric buildings but was instead considering "just a fabric building" that Mr. McNalty had called "either commercial or industrial agricultural something." Mr. Houghton stated that he raised his concerns with Mr. McNalty, who he said shared his frustration. Mr. Houghton did not recall precisely when the conversation occurred but said it was before the staff report relating to the structures was finalized. Mr. Houghton also testified that he discussed his concerns that

WGD had “missed the mark” with Treasurer Leonard on August 24, before the finalization of the staff report. Mr. Houghton indicated that he did not discuss the report with Ms. Proctor, saying she was “hardly around.”

Mr. Houghton gave his evidence after Mr. McNalty and Ms. Leonard had testified. Mr. Houghton’s counsel did not ask them if they recalled any such conversations with Mr. Houghton about the WGD report. In her testimony, Ms. Leonard said she may have reviewed the report but generally relied on Mr. McNalty and Mr. Houghton to review and provide the relevant engineering information. She also did not recall any discussions about errors in the report.

I do not accept that Mr. Houghton had concerns about WGD not considering Sprung-type structures or that he discussed any concerns with Mr. McNalty or Ms. Leonard before the staff report was finalized. No other Inquiry witnesses raised any concern that, after WGD addressed the insulation issue, WGD had failed to consider the correct type of fabric building. In any event, Mr. Houghton testified that he did not take any steps to address his concerns or speak with WGD to confirm that the company had considered a Sprung style of fabric building. When asked why he did not take steps to ensure that the Town’s paid consultants completed its work as the Town had requested, Mr. Houghton testified:

Am I the only one that makes decisions in the Town of Collingwood? I believe that this report was not my report. I believe that this report was either Marta’s report and that – that that – that should have been the person that was taking this to it.

At this point in time, Marta was away again. I spoke to Dave McNalty. It didn’t appear like it was going to change what he was doing. I don’t think that – that it’s – it’s my job to do everything.

BLT, Green Leaf, and the Town

Acting CAO Ed Houghton introduced Town staff to BLT Construction Services Inc. shortly after Council directed staff to develop project timelines and estimates for constructing both a single-pad arena and a fabric building over the outdoor pool. Town staff assembled a list of design components at BLT's request. Rather than presenting the Town's design details directly to BLT, Mr. Houghton arranged for Green Leaf Distribution Inc. to provide them. Paul Bonwick was the majority owner of Green Leaf. The company continued to act as an intermediary between Mr. Houghton and BLT thereafter.

Staff Introduced to BLT

As I discussed in Part Two, Chapter 6, on July 26, 2012, representatives from Green Leaf and BLT met and agreed that Mr. Bonwick would promote Sprung structures in Collingwood in exchange for a success fee to be agreed upon later. On the same day, acting CAO Ed Houghton invited specific Town staff and Sprung's Tom Lloyd to a meeting on July 27. This meeting would prove to be Town staff's first encounter with BLT.

The July 27 meeting took place at the Collus PowerStream offices. Mr. Houghton, Marjory Leonard, treasurer, Dave McNalty, manager of fleet, facilities and purchasing, and Dennis Seymour, manager, recreation facilities and arena supervisor, attended the meeting on behalf of the Town, with Tom Lloyd and Dave MacNeil representing Sprung. Dave Barrow and Mark Watts attended on behalf of BLT. Mr. Houghton testified that Deputy Mayor Rick Lloyd attended the meeting. However, when Mr. Lloyd gave his evidence, he

could not recall whether he was aware of the meeting. He was not a recipient of the calendar invitation to the meeting sent out by Mr. Houghton the day before. Neither Mr. Barrow nor Ms. Leonard recollected the deputy mayor attending the meeting.

I am satisfied by the evidence, in particular the absence of a calendar invitation, that Deputy Mayor Lloyd did not attend this meeting.

BLT and the Construction of Sprung Structures

Tom Lloyd testified that, at the meeting, he introduced BLT Construction Services Inc. as Sprung's "recommended alliance partner" that could build the Sprung structures "full turnkey." Mr. Barrow testified that he explained, although BLT and Sprung did not have significant experience with pools or arenas, BLT "could build anything inside of a Sprung" as long as appropriate professionals were involved. Mr. Barrow stated that he did not discuss BLT's relationship with Green Leaf because no one asked.

Mr. Houghton and Ms. Leonard testified that they left the meeting believing that, if the Town wanted to proceed with Sprung, BLT had to build the structures. Tom Lloyd testified, however, that before the meeting, he told Mr. Houghton that the Town could hire a contractor other than BLT. In that case, BLT could still oversee the construction in a "project manager" role.

Mr. Barrow testified that the possibility the Town might not use BLT was raised at the July 27 meeting. He recalled explaining that, if BLT was hired as the general contractor to build the structures, it could provide the Town with a guaranteed budget in advance. In contrast, if it served as a project manager, BLT could not confirm costs until the contractor was hired. Mr. Barrow stated that Mr. Houghton indicated that the Town would prefer BLT to be the general contractor, not a project manager.

Dave McNalty recalled that BLT was introduced as Sprung's preferred builder but that the Town was not required to use the firm.

I am satisfied that Tom Lloyd told Mr. Houghton in advance of the July 27 meeting that the Town was not required to use BLT. Tom Lloyd was the regional sales manager for Sprung Instant Structures and I am satisfied that he would have told a prospective purchaser all the ways the purchaser could acquire a Sprung structure. Mr. Barrow was a partner in and vice-president

of BLT when he attended the July 27 meeting, and I am satisfied he would have explained the different ways in which the Town could contract with his company. I reject Mr. Houghton's evidence that he left the July 27 meeting thinking that he had to hire BLT Construction Services to construct the Sprung coverings.

Tom Lloyd testified that, at a meeting on August 3, which I discuss below, he advised Mr. Houghton that, as a cost-saving measure, the Town could buy a Sprung structure without going through BLT. Mr. Houghton, however, declined to do so. I accept Mr. Lloyd's evidence in this regard. It was consistent with his role that he would present the most price competitive way for the Town to purchase a Sprung structure.

The Sprung Shield

An added security feature called the "Sprung Shield" was discussed at the July 27 meeting. The shield was an eight-foot aluminium barrier that was built into the walls of the fabric membrane, protecting the structure from vandalism and damage. The shield cost \$180,000. Mr. McNalty and Ms. Leonard testified that they expected the Town would purchase the Sprung Shield. They learned that the shield was not included only after the Town signed its contract with BLT and, in the case of Ms. Leonard, after the structures had been built.

Mr. Houghton and Mr. Barrow, in contrast, testified that the shield was discussed at the July 27 meeting and that the Town decided against it because of its high cost and the low risk of vandalism in the locations. I do not accept that a decision about the Sprung Shield was made at this meeting. As I explain in Chapter 15, when a Town staff member asked about "when and why the shield was deleted" in July 2013, Mr. Barrow initially said it was discussed at a meeting with Mr. Houghton, Ms. Leonard, and Larry Irwin "before the building was erected," but did not provide a precise date.* Mr. Barrow amended his response after Mr. Houghton told him there were more people at the meeting.

* Mr. Irwin was a member of the Executive Management Committee and director of operations and IT services for Collus Power.

I am satisfied that Mr. Barrow did not have a clear recollection of when the Town decided not to include the Sprung Shield. I am satisfied that neither Mr. McNalty nor Ms. Leonard was involved in the decision. The fact that two senior staff mistakenly believed the Town had purchased the Sprung Shield can be traced to the communication headache created by the deputy mayor's insistence that Ed Houghton was the only person who could contact Sprung.

The decision whether to purchase the Sprung Shield was never placed before Council. In his closing submissions, Mr. Houghton argued that the decision did not need to be put to Council because the deputy mayor attended the July 27 meeting. Deputy Mayor Lloyd testified that, although he recalled discussing the shield at some point, he did not recall being involved in the final decision. The deputy mayor did agree that this decision should have been made by Council.

At the end of the July 27 meeting, Mr. Barrow advised that, to create a firm budget, BLT would need a list of all the components the Town wanted included in the arena. The Town committed to preparing a list.

Facility Components and Pricing

While Town staff were soliciting general estimates from WGD Architects for pre-engineered steel and fabric arenas, acting CAO Houghton was leading advanced discussions with Sprung and BLT on pricing and components for the construction of a fabric arena and pool. Treasurer Leonard did not understand why the Town was soliciting detailed information from a specific supplier when WGD was already providing estimates for a fabric arena. Ms. Leonard also stated that the Town did not have a meeting with WGD similar to the one it had with Sprung and BLT.

Ms. Leonard was right to be confused. Council never directed staff to obtain a quote from a specific supplier. Rather it directed staff to develop timelines and estimates, which was the work WGD was already doing, albeit with respect only to an arena. Meetings to discuss design details with a specific supplier were premature. As Richard Dabrus of WGD testified, the Town should have been focused on developing the specifications it wanted in an arena and pool generally, and not what one supplier could provide. From there, the Town could put those specifications out to tender. Meeting

to discuss specific quotes with a specific supplier, in contrast, impaired the Town's ability to have a competitive procurement, as it gave BLT a clear advantage over any other bidders. It was effectively an early bid. Any subsequent request for proposal (RFP) that involved a bid from BLT would be unfair to other bidders.

Green Leaf's Involvement

Mr. Bonwick's Firm, Green Leaf, Working for BLT

At a meeting on August 1, Paul Bonwick told acting CAO Ed Houghton that he was working for BLT. Mr. Houghton testified that "Mr. Bonwick advised me that he, through Ms. [Abby] Stec, [president, Green Leaf,] had created a relationship with Sprung and then, ultimately, BLT and that they're going to be working with BLT and that Ms. Stec was going to be ... the local facilitator for BLT." Mr. Houghton told the Inquiry they did not discuss how BLT would pay Mr. Bonwick, or any conflict of interest created by Mr. Bonwick's relationship with Sprung or BLT. He added that he did not know why BLT decided to involve Mr. Bonwick so late in the process.

Later in his evidence, Mr. Houghton said that he could not recall if they discussed which of Mr. Bonwick's companies would be doing the work. I do not accept this evidence. I am satisfied that Mr. Bonwick told Mr. Houghton that he was working through Green Leaf for BLT.

Mr. Houghton did not advise anyone at the Town that Mr. Bonwick was working with BLT through Green Leaf or any other company. He told the Inquiry that he did not disclose Mr. Bonwick's work for BLT to the Town because he was busy, "no one seemed to care" when Mr. Bonwick's work for PowerStream was disclosed to the Town, and he understood there was no conflict for the mayor if Mr. Bonwick worked on Town business. He also said Mr. Bonwick did not ask him to keep his work for Green Leaf a secret. As I discuss further in Part Two Chapter 13, Mr. Houghton should have disclosed his knowledge of Mr. Bonwick's work to Council and staff.

Ms. Stec reported on Mr. Bonwick's August 1 meeting with Mr. Houghton to Sprung's Tom Lloyd and Dave MacNeil and BLT's Mark Watts and Dave Barrow by email:

Paul met with Ed Houghton today to continue discussions regarding the Collingwood project. Ed will be in touch with you in the next day or so to set up a follow up meeting to continue the process. We are drawing up an agreement between Green Leaf Distribution and BLT and will forward it to you for your review when it has been completed.

Ms. Stec testified that Mr. Bonwick dictated this email. She explained that she knew little about the conversation between the two men: “I was generally just asked to send out whatever emails were necessary.” She said “the process” referred to in her email was the Collingwood pool and arena. Mr. Barrow testified that the meeting with the CAO was the sort of work he expected to pay Mr. Bonwick to do.

Staff Work Provided to BLT Through Green Leaf

Ed Houghton, the Executive Management Committee (EMC), Dave McNalty, and Dennis Seymour met to discuss “design components” for the arena and pool at a meeting on July 31. Mr. McNalty sent Mr. Houghton, the EMC, and Mr. Seymour lists of arena and pool design components for their comments on August 2. Treasurer Leonard understood that the lists would be used to prepare the cost estimates Council had asked staff to provide, and later be used in an RFP to be prepared after the August 27 Council meeting. She could not recall if the information was to be provided to Sprung or WGD.

Mr. McNalty testified that the staff documents were “to begin to develop common ground between what Sprung would propose and the information that WGD was developing.” He could not recall, however, what Town staff did to ensure that WGD obtained the information. As I explain in Part Two, Chapter 7, WGD was not provided with this detailed information before it submitted its report to the Town.

Later that same day, Abby Stec sent Sprung and BLT a memo on Green Leaf letterhead that contained a list of arena and pool design components nearly identical to what Mr. McNalty had circulated internally at the Town. Ms. Stec believed that she received the information from Mr. Houghton, although she was not certain. She said Mr. Bonwick asked her to put it on Green Leaf letterhead and send it to BLT and Sprung.

Mr. Houghton testified that Deputy Mayor Rick Lloyd delivered a hard copy of staff's design component lists to Ms. Stec so she could provide them to BLT. He said that Ms. Stec acted as an intermediary between him and BLT. He wasn't aware of any other work she was doing for BLT. Mr. Barrow testified that Green Leaf provided this information to BLT so BLT could prepare budgets for the two projects. Ms. Stec did not know why the Town could not provide this information directly to BLT or Sprung. Leaving aside the question of whether this information should have been provided at all, I am satisfied that there was no good reason why Town staff could not have provided this information to BLT. Town staff prepared the information; Ms. Stec did not add any additional value to the communication of this information.

I am satisfied that Mr. Houghton arranged for Ms. Stec to provide the design component information to BLT to bolster Green Leaf's and Mr. Bonwick's profile with the construction company.

Mr. Houghton and BLT's Role

The Town met with Sprung again on August 3 to discuss the design components it had prepared, further impairing its ability to run a competitive procurement. Tom Lloyd testified that, at the meeting, he advised Mr. Houghton that the Town could purchase the fabric building envelopes directly from Sprung to avoid paying BLT's markup on the fabric structure. He said that Mr. Houghton, however, "wanted a full design build contract only with BLT."

Mr. Houghton testified that Tom Lloyd told him that "you can go direct and purchase it direct, but there are risks with doing that" and that doing so would probably cost more money. Mr. Houghton said that he was confused by the conversation because "we didn't differentiate between Sprung BLT." He always thought that the construction had to be done by BLT, because "it had to be a partner that was familiar with the type – how to erect the buildings." He explained that his biggest fear was that the project would cost more than originally projected.

Mr. Houghton contacted Mr. Bonwick to have him explain the situation. Mr. Bonwick did not recall the details of his conversation with Mr. Houghton, other than Mr. Houghton was confused by the prospect of a direct purchase from Sprung, which was "completely contrary to what [he, Ms. Stec,

BLT, and Sprung] had been discussing as a team.” Mr. Bonwick speculated that his disclosure of his relationship with BLT may have contributed to Mr. Houghton’s confusion, because he “would have” told Mr. Houghton that “what BLT / Sprung is trying to achieve here is a turnkey, the simplest, most understandable, most manageable approach to achieving what the Town of Collingwood wanted.” Mr. Bonwick could not recall what, if any, steps he took to address Mr. Houghton’s confusion.

Tom Lloyd testified that Mr. Bonwick contacted him after the meeting and he clarified what he had said to Mr. Houghton. At that time, Mr. Bonwick indicated that the Town’s preference was to “go with a contract directly to BLT.”

Mr. Bonwick emailed BLT’s Dave Barrow and Mark Watts, Sprung’s Tom Lloyd and Dave MacNeil, and Ms. Stec after speaking with Mr. Houghton:

We need to organize a call to once again discuss our collective strategy. Ed was very confused regarding part of the discussion with Tom this morning. If there has been a change in approach I think we all need to understand it and then determine how we participate going forward.

Mr. Barrow testified that he spoke with Tom Lloyd after receiving this email, reminding him that Sprung and BLT already had an agreement to work collectively and “that it all would all be going through BLT,” meaning that Collingwood was supposed to be buying the buildings from Sprung through BLT. He also participated in a conference call with Ms. Stec, Mr. Bonwick, and his BLT partner Mark Watts in which they discussed the need to speak to Tom Lloyd to ensure that everyone was on the same page and that Sprung, BLT, and Green Leaf were moving forward together.

Mr. Houghton testified that he did not investigate BLT beyond speaking with Sprung and Mr. Bonwick before deciding that the Town should contract with BLT to build the structures. He did not ask if BLT had previously constructed a pool building, and he was not aware that it had never constructed an arena. He did not ask Sprung or BLT about the nature of the partnership between them, nor did he view the BLT website before August 27. Mr. Houghton also testified that he did not take any steps to investigate Sprung other than speaking with representatives from the company, reviewing the Sprung

website, and looking at other information under a Google search for Sprung. He said he did not contact any of the references listed on Sprung's websites.

In explaining why he was comfortable proceeding with BLT and Sprung, Mr. Houghton testified:

I guess I took it on faith in a sense that Sprung, which was a Canadian company, one that appeared to – when I googled their company, they had a lot of pride in what they were doing.

I don't think that they would have aligned or associated themselves with a company that was not reputable in any way, shape, or form.

Contact Between Messrs. Bonwick and Houghton

On August 6, Mr. Bonwick emailed Mr. Houghton, asking if he had time to speak the following day. Mr. Houghton replied: "Yes Bubba. Tuesday morning may be tough. What is the topic?" Mr. Bonwick responded: "Golf Tournament, BLT, new Board, Mt. View." The two agreed to meet at 8:30 the next morning. Mr. Houghton explained that the "Golf Tournament" referred to the mayor's golf tournament, a charity tournament which "many of us were always trying to make ... bigger and better" and was also "going to be the launching point for Collus PowerStream." "Mt. View" related to the Town purchasing a local hotel. Mr. Bonwick worked for the owner and "had helped in a couple ways." Mr. Houghton believed "new Board" referred to the new Collus PowerStream board. Mr. Houghton did not recall the specifics of their conversation, including what they discussed about BLT. The email, nevertheless, offers a glimpse of the nature of their dealings during the summer of 2012.

Phone records obtained by the Inquiry show that, throughout the summer, Mr. Bonwick and Mr. Houghton spoke frequently, often multiple times per day. At the hearings, Mr. Houghton suggested that Mr. Bonwick's role as a consultant to PowerStream led to their frequent contact, as Mr. Bonwick was the "liaison" between Collus Power and PowerStream. He testified that, among other things, the two men discussed the launch of Collus PowerStream at the mayor's golf tournament, the company's new logo and branding, the Ontario Energy Board approval process, and future consolidation.

Mr. Houghton also testified that Mr. Bonwick was assisting with certain Town matters, including the Mt. View hotel and securing municipal services for a property on Raglan Street. The two men also had personal conversations, including about their snowmobile club.

I do not accept the suggestion that the two men's frequent communications in August 2012 did not involve regular discussions of BLT. By then, BLT had agreed to pay Mr. Bonwick (through Green Leaf) to promote the Sprung structures to the Town in exchange for a success fee (see Part Two, Chapter 9). This success fee ultimately amounted to \$756,740.42, including HST, and it offends common sense to suggest that Mr. Bonwick would pass on any opportunity to discuss this procurement with Mr. Houghton, his friend and the Town's acting CAO. As will be seen, Mr. Bonwick and Mr. Houghton spoke on the phone before key events leading to the Town's decision to proceed with a Sprung arena and pool.

Mr. Houghton was also in contact with Ms. Stec regularly. Between August 1 and August 27, they spoke on the phone at least 15 times. Mr. Houghton admitted that these calls were primarily about the "Sprung deal."

Meeting with Department Heads, August 7

On August 7, acting CAO Houghton chaired a meeting of Collingwood's department heads at which he presented information, provided to him by Sprung, about Sprung structures' support columns and beams. He also discussed the environmental efficiency of Sprung structures and durability of their fabric exterior. Regarding the potential LEED status of Sprung structures,* the minutes record:

Sprung buildings can attain equivalent to LEEDS "Silver Standard" certification, but will not be certified as the process and attributed costs cannot be justified.

Marjory Leonard recalled attending the meeting. She testified that Mr. Houghton did not provide the Town's department heads with similarly

* I discuss this issue further in Part Two, Chapter 11.

detailed information about other recreational facility construction types being examined by staff. For arena facilities, for instance, she stated Mr. Houghton provided staff with more information on Sprung structures than pre-engineered steel structures. As for fabric-covered pool structures, she testified that Mr. Houghton did not give the Town's department heads information about any suppliers other than Sprung. By this point, Treasurer Leonard was of the view that staff's investigative process was "heavily weighted towards Sprung."

Ms. Leonard testified that she did not raise these concerns with either Mr. Houghton or Mr. McNalty, whom she considered "in charge of the process," because she believed they would not be taken seriously. She also stated that, even if Mr. McNalty agreed with her concerns, he would have been overruled by Mr. Houghton.

The minutes of the August 7 meeting also stated: "Marta will join the [EMC] at their Wednesday meeting to be brought up to date on developments with respect to both Central Park and Centennial Pool." On August 8, Mr. Houghton sent the EMC and Marta Proctor an email with the subject line "Executive Management Meeting." The email listed topics for discussion, among them "Central Park – including the Sprung buildings on an ice pad and the centennial pool." Ms. Proctor recalled attending a meeting with the EMC at which she was brought up to speed but could not recall the contents of the discussion.

As staff worked to meet the August 27 staff report deadline, Mr. Houghton continued to meet and communicate with BLT to discuss potential recreational facility components. Mr. Bonwick and Ms. Stec sometimes served as liaisons between Mr. Houghton and BLT during this discussions. No other recreational facility suppliers were provided with this level of access to the Town's CAO during this time.

BLT Prepares Budgets for Collingwood's Recreational Facilities

In the month following their meeting on July 26, 2012, BLT Construction Services Inc. and Green Leaf Distribution Inc. negotiated an intermediary agreement while BLT worked to assemble budgets for the construction of Sprung arena and pool facilities in the Town of Collingwood. Part of BLT's budgeting process involved finalizing Green Leaf's fee.

The intermediary agreement obscured Green Leaf's relationship with BLT and inaccurately described the work Green Leaf would be doing. Moreover, the compensation provisions and the way BLT built Green Leaf's success fee into its budget concealed Green Leaf's fee from the Town.

Abby Stec sent much of Green Leaf's correspondence regarding the agreements and its fees to BLT under her name. The content of this correspondence, however, was dictated by Green Leaf's majority owner, Paul Bonwick.

The Non-disclosure Agreement Between BLT and Green Leaf

Green Leaf and BLT first met on July 26, 2012 (see Part Two, Chapter 6). Four days after this meeting, Mr. Bonwick directed Ms. Stec to send a non-disclosure agreement to Dave Barrow and Mark Watts, the executive vice-president and president, respectively, of BLT. In her cover email, Ms. Stec wrote:

It was a pleasure speaking with you on Friday. As promised, I have attached a standard Non Disclosure Agreement for the relationship between Green Leaf Distribution and BLT. We will send an agreement

out to you by Wednesday of this week. I look forward to working with you both on this project and future endeavours.

The draft non-disclosure agreement did not prohibit disclosure of the working relationship between BLT and Green Leaf.

Ms. Stec testified that the agreement prevented both Green Leaf and BLT from disclosing their business relationship to any third party. When Mr. Bonwick cross-examined Ms. Stec on this point at the hearings, he suggested that her understanding of the agreement was inaccurate because her work for Green Leaf involved “engagement with the municipality, and they were aware of the fact that Green Leaf was working with BLT.” Ms. Stec did not agree with Mr. Bonwick’s suggestion.

Mr. Bonwick testified that he generally entered into non-disclosure agreements with his clients at the time it became clear they would be working together. He argued that the non-disclosure agreement prevented Green Leaf from disclosing information about BLT’s business to third parties. It did not, however, prevent BLT from disclosing information about Green Leaf.

Mr. Barrow told the Inquiry he believed the non-disclosure agreement prevented BLT from discussing Sprung structures directly with representatives of the Town of Collingwood and required BLT to communicate with the Town through Green Leaf. I note, however, that Mr. Barrow communicated directly with Ed Houghton, the acting chief administrative officer (CAO), about the budgets BLT was to provide to the Town on August 22.

While Ms. Stec engaged with Mr. Houghton during her work with Green Leaf, nobody else on staff knew that Green Leaf was involved in Collingwood’s search for new recreational facilities.

The Intermediary Agreement

Mr. Bonwick and BLT negotiated the intermediary agreement regarding Green Leaf’s services throughout August 2012. Mr. Bonwick conducted the majority of the negotiations through Ms. Stec, further obscuring his involvement in the recreational projects. Green Leaf and BLT signed the agreement

on August 27 – the same day that Council voted to sole source and construct a Sprung arena and pool.

Mr. Bonwick Negotiates with BLT

On August 1, Ms. Stec advised BLT: “We are drawing up an agreement between Green Leaf Distribution and BLT and will forward it to you for your review when it has been completed.” She sent the agreement, which Mr. Bonwick instructed his lawyer to draft, to BLT on August 13.* On August 17, Mr. Watts responded to Ms. Stec, Mr. Bonwick, and Mr. Barrow with some revisions he proposed to the language of the contract regarding Green Leaf’s compensation.

The revisions included a reference to an “agreed fixed fee from BLT.” In the hearings, neither Mr. Bonwick nor Mr. Barrow could explain the reference to a fixed fee in this email, but the provision survived several rounds of revisions and remained in the final contract. Mr. Watts’s proposed revisions also required BLT to pay Green Leaf “within two business days of BLT receiving its first draw or deposit from the third party” unless Green Leaf’s fee was greater than 30 percent of the deposit.

These payment provisions were immediately unacceptable to Mr. Bonwick, who testified that Green Leaf should be paid its success fee as soon as BLT achieved “success” by signing a contract with the Town. He said he considered Mr. Watts’s proposed amendment an attempt to install a payment plan, which would expose Green Leaf to the risk of not receiving its full compensation.

Mr. Bonwick dictated his response to BLT’s revisions to Ms. Stec, who, at his instruction, sent a revised contract to BLT on August 19. This version of the contract required BLT to pay Green Leaf “upon signing of the contract between BLT and the third party and BLT receiving their first draw from the third party.” Mr. Bonwick also dictated the covering email Ms. Stec sent. It stated, “Paul has had preliminary discussions with Ed regarding the first draw and it will be substantial enough to cover both the compensation and your initial operation costs.”

* This draft was not produced to the Inquiry.

Ms. Stec testified that, in their discussions, Mr. Bonwick and Mr. Houghton had agreed that “the first draw would ... be substantial enough that the Green Leaf compensation could come out of it.” Although Mr. Bonwick could not recall any specific conversations with Mr. Houghton regarding the Town’s first payment to BLT, he acknowledged that he likely had such a discussion with Mr. Houghton. He testified that he would not have mentioned Green Leaf’s fee at this point, but he likely informed Mr. Houghton that the Town’s contract with BLT would require a sizable upfront payment on signing. Mr. Houghton also could not recall having this conversation with Mr. Bonwick, though he acknowledged that Mr. Bonwick might have told him that, if the Town signed a contract with BLT, a large deposit would be required.

The fact that Mr. Houghton and Mr. Bonwick were discussing a potential contract between the Town and BLT as early as August 19 suggests that a competitive procurement process did not factor into Mr. Houghton’s plans.

Mr. Bonwick continued to push for immediate payment once BLT received its first payment from the Town. On August 24, he emailed Ms. Stec about the timing of BLT’s payment to Green Leaf:

Hi Abby: I believe we have been acting in good faith up to this point and will continue to do so however if they are receiving a 25 or 30% deposit we will require our payment at the same time. Two days is not relevant in banking terms.

Ms. Stec forwarded this email to BLT that day at Mr. Bonwick’s direction. Mr. Bonwick testified that at the time Ms. Stec sent this email to BLT, he understood that BLT would be asking the Town to pay between 25 percent and 30 percent of the cost of the recreational facilities upfront as a deposit. He contemplated that BLT would be using funds it received from the Town to pay Green Leaf, as he explained at the hearings:

[I]t was my understanding that BLT was paying the Green Leaf fee as part of their compensation. I did not expect them to take money from another project to pay us or personal funds to pay us. I was certainly aware of the fact that the funds that would be disbursed to Green Leaf would be as a result of their overall contract.

Without getting into the semantics of it, simply my understanding was, part of that contract would be they would be paying us out of their proceeds in terms of profitability.

Mr. Bonwick directed Ms. Stec to forward his email to Mr. Barrow that day. In her correspondence with Mr. Barrow, she wrote, “I have forwarded Paul’s response which we feel is reasonable. Please let me know if we can sign as is.”

Ms. Stec could not recall what about Mr. Bonwick’s message she felt was reasonable. As I discuss below, Ms. Stec told the Inquiry that Mr. Bonwick’s use of Green Leaf was not consistent with Green Leaf’s business. She ultimately refused a share of Green Leaf’s profits from the deal.

Mr. Barrow responded to Ms. Stec’s email stating, “I am waiting reply from Mark but we dont [*sic*] want to be in the position that the city takes 3 weeks for the deposit and were [*sic*] obligated to pay you immediately. I have worked for the city and usually it’s a process.” Ms. Stec testified she was not involved in discussions about the timing of BLT’s payment to Green Leaf and did not recall how Green Leaf and BLT resolved the issue.

Misleading Provisions Regarding the Scope of Work

The scope of work that Green Leaf committed to provide to BLT under the intermediary agreement was inconsistent with Green Leaf’s line of business. The description was also inaccurate and misleading: it included work that Green Leaf did not provide to BLT and omitted Mr. Bonwick’s work advocating for BLT with the Town’s decision makers.

As I discuss in more detail in Part Two, Chapter 12, Mr. Bonwick testified that it was his responsibility to “create the environment where [Council] would go in the direction they did” – in other words, the decision to sole source the Sprung arena and pool. Mr. Bonwick pursued this responsibility by promoting Sprung structures to Council members and other community leaders, although he did not tell them about his relationship with BLT.

Ms. Stec testified she understood that Mr. Bonwick “would be leveraging his relationships in the community to help ... meet the goal of ... sole sourcing the project.”

Similarly, in its closing submissions, BLT described the services Green Leaf provided:

Abby Stec would act as the communication liaison between BLT and the representative of the Town, its CAO. Paul Bonwick would be engaged in lobbying efforts to persuade members of Council, and others, that a Sprung-by-BLT was the right solution to meet the Town's needs.

The intermediary agreement did not refer to lobbying. Instead, it described Green Leaf's services under five points:

- a. Providing to BLT the name and contact information (phone, fax, email addresses) of one or more third parties that Green Leaf believes would benefit from the services and materials that BLT has to offer
- b. The third party(ies) that Green leaf will furnish to BLT will be third parties which to Green Leaf's knowledge and belief have not had a prior business relationship or ongoing business relationship or ongoing business discussions with respect to the business deal that Green Leaf proposes
- c. Through Green Leaf's third party prospect research and inventory of leads, Green Leaf will also provide to BLT a brief description of the needs of the third party and how BLT should be able to meet those needs with the materials and services BLT provides
- d. If BLT is interested in doing work for the third party, Green Leaf will assist in putting the third party and BLT together to discuss the suitability of the matching
- e. if the third party and BLT are interested in proceeding with a formal contract whereby BLT will be providing materials and or services to the third party, Green Leaf will assist BLT in formulating the applicable contract(s)

Ms. Stec did not know if Mr. Bonwick provided any of the listed services.

The agreement also contained a number of "whereas" clauses that described Green Leaf's business activities, including:

Green Leaf is in the business among other things of acting as an intermediary in bringing companies like BLT into contact with third parties in situations where the needs of these third parties may be met by the products and services that BLT has to offer.

Ms. Stec testified that this clause did not accurately describe Green Leaf's line of business at the time the agreement was signed. When cross-examined by counsel for the Town of Collingwood, she agreed that the Town had begun discussing recreational facilities with Sprung long before Green Leaf became involved. Ms. Stec also agreed that these discussions were likely to lead to BLT's involvement in the project because Sprung already had a referral arrangement with BLT. She further agreed that the actual services Green Leaf provided to BLT involved Mr. Bonwick working to secure a sole-source procurement for the Sprung structures.

The intermediary agreement did not accurately portray the services that Mr. Bonwick provided to BLT. Anyone reviewing that agreement would not know that Mr. Bonwick was leveraging his community relationships in order to secure BLT a sole-source contract with the Town.

No Disclosure of Payment to Green Leaf

The compensation clauses in the intermediary agreement operated to conceal Green Leaf's fee in three ways.

First, the intermediary agreement required that BLT pay Green Leaf directly, prohibiting BLT from paying Green Leaf "by way of direct or re-directed deposit or advance by the third party." According to Mr. Bonwick, the purpose of this provision was to ensure that Green Leaf's work for BLT did not increase the Town's costs.

I do not accept this evidence. Nothing about the language of this provision, or any other provision in the intermediary agreement, prevented BLT from passing Green Leaf's fee to the Town in a manner that increased the total the Town had to pay. The provision did, however, prevent BLT from arranging for the Town to pay Green Leaf directly, which would have alerted the Town to Green Leaf's fee. Mr. Barrow and Ms. Stec testified that they did not know why the provision was included in the agreement.

Second, the intermediary agreement did not specify Green Leaf's fee, providing instead that "BLT shall pay compensation to Green Leaf in an amount that Green Leaf in its discretion determines appropriate above and beyond the agreement fixed fee from BLT." As I discuss below, Green Leaf and BLT agreed to Green Leaf's fee before the agreement was executed, so there is no obvious reason why the fee could not have been stipulated in the contract between the two companies. However, because the fee was not stipulated in the agreement, anyone reading it would not learn what BLT paid Green Leaf.

Third, the intermediary agreement went further to hide Green Leaf's compensation. It required BLT to treat the details of the compensation it paid to Green Leaf "as strictly confidential, whether or not a contract is ultimately entered into between BLT and a third party introduced by Green Leaf."

Mr. Barrow testified he did not recall that BLT was required to keep Green Leaf's compensation confidential. He had no idea why the clause was included in the agreement.

Mr. Bonwick testified that clauses of this nature were "standard operating procedure." He argued that, as a private citizen, he believed he was entitled to keep the details of his business transactions confidential. When asked whether he was concerned that the clause would obstruct the Town from obtaining complete information on all BLT's subcontractors and consultants, he responded that, in his experience, customers were generally not entitled to such information. Mr. Bonwick was also asked whether he was concerned that disclosure by BLT of Green Leaf's fee might create the perception that he influenced Council's decision regarding the recreational facility. He responded:

The reality is there are those within the community that, if I'm engaged in any manner – certainly, during this period of time, if I was engaged in any manner, there was a perceived conflict of interest.

Mr. Bonwick was correct in his assessment that the public had concerns about conflicts of interest in instances where he was working for clients looking to do business with the Town.

Signing the Agreement

Green Leaf and BLT signed the contract, titled “Intermediary Agreement,” on August 27. Mr. Watts signed on behalf of BLT, and Ms. Stec signed as president of Green Leaf. Mr. Bonwick had assigned Ms. Stec the title of Green Leaf president without notice in June 2012 (see Part Two, Chapter 6). Despite her new title, Ms. Stec did not negotiate the intermediary agreement on behalf of Green Leaf. Her role in the BLT transaction was essentially administrative.

Ms. Stec testified that Mr. Bonwick informed her that, while his relationship with the mayor did not create a conflict of interest, he wanted her (Ms. Stec) to sign because he “didn’t want any perceived conflict to even enter the realm of ... the project.” She further testified that Mr. Bonwick never explained to her how undertaking the project with Green Leaf reduced the risk of a perceived conflict, but she understood it had to do with the fact that she – not Mr. Bonwick – was the “face” of Green Leaf and undertook most of the company’s day-to-day activities.

In addition, Ms. Stec testified she was uncomfortable signing the agreement as Green Leaf’s president. In her view, Green Leaf was “an environmental ... distribution company that had nothing to do with communications or lobbying.” The intermediary contract, she said, “did not reflect the day-to-day actions and ... mandate of Green Leaf.” Ms. Stec believed that the Collingwood recreational project should have been undertaken by Compenso Communications Inc., Mr. Bonwick’s lobbying company. She stated at several points in her testimony that she wished she had made her concerns clearer to Mr. Bonwick, but that she lacked the “voice” to do so.

Mr. Bonwick testified he did not recall discussing a perceived conflict of interest with Ms. Stec. He took the position he would have had no reason to discuss conflicts of interest with her because he had confirmed over the course of his retainer with PowerStream that his work on matters related to the Town did not place his sister, Mayor Sandra Cooper, in a conflict of interest. He did agree, however, that he likely told Ms. Stec that he “was going to remain in a less profiled position than she would be in terms of her engagement” with the recreational facility initiative.

Further, Mr. Bonwick did not recall Ms. Stec ever raising concerns with him about the appropriateness of using Green Leaf, as opposed to Compenso,

for the BLT work. For four reasons, he disagreed with her assessment that it was inappropriate for Green Leaf to be a party to the agreement. First, he noted that by the time the contract was signed, Green Leaf, BLT, and Sprung had discussed an "alliance" through which they would market Sprung products throughout Ontario. He also stated that Sprung, BLT, and Green Leaf had a shared commitment to environmentalism. Further, he took the position that Green Leaf was a new company that had not yet settled on a line of business and was free to pursue any direction it saw fit.

Finally, in his closing submissions, Mr. Bonwick suggested he had to work through Green Leaf because "[i]t was clearly stated from the outset by Mr. Tom Lloyd, Regional Sales Manager, Sprung that the introduction to a potential long term relationship was specific to Greenleaf [*sic*] with no mention of the communications company I operated." He also relied on evidence from his cross-examination of Mr. Barrow, in which Mr. Barrow agreed with Mr. Bonwick's suggestions that Compenso was not introduced to BLT as a potential partner, and that it was "always the intention that Green Leaf would work with BLT and Sprung to carry this model across the province."

I do not accept these propositions for two reasons. First, Mr. Bonwick's insistence that he be paid promptly after the Town paid BLT belies the evidence of both Mr. Bonwick and Mr. Barrow that they intended to work together on other projects for other municipalities. The negotiations about payments focused on how they would be made for the Collingwood projects, and not for any future projects. Ms. Stec testified that she understood the intermediary agreement applied only to Green Leaf's and BLT's work on the Collingwood recreational facilities and that discussions of an alliance between the companies at the time of the agreement "were very loose, there was nothing definitive about that."

Second, Mr. Bonwick was clearly in control of his relationship with BLT. It was open to him to conduct his business with BLT through his communications company, Compenso, which witnesses testified was a well-known entity in Collingwood. He chose instead to use Green Leaf, a company with which he was not publicly associated, to avoid any public connection between himself and BLT's deal with the Town.

BLT's Budgets and Green Leaf's Fee

While BLT and Green Leaf negotiated their commercial relationship, BLT created budgets for a Sprung arena and a Sprung building to cover the outdoor pool. BLT incorporated Green Leaf's fee into the budgets by increasing the costs associated with each budget line item, not by incorporating the fee separately among the "other costs associated with the construction." The budget explicitly identified these "other costs" as individual line items. In this way, the budgets concealed the fee BLT paid to Green Leaf.

Green Leaf's Review of BLT's Budgets

On August 20, Ms. Stec emailed Mr. Barrow asking if he had finalized the pricing "for the two facilities." She followed up the next day because, as she testified, Mr. Bonwick had expressed a sense of urgency to finalize the pricing for the facilities. Ms. Stec did not know why he was in a hurry to find out the budget cost for covering the outdoor rink and swimming pool, nor did she understand what Green Leaf would do with the budgets when Mr. Barrow sent them.

Mr. Barrow emailed Ms. Stec and Mr. Bonwick construction budgets for a new Sprung arena and a Sprung fabric cover for Centennial Pool on August 21, stating: "Here are the numbers for both locations arena and pool. Let me know what you wish to adjust too [*sic*] and I will re-submit to send to Ed." The attached budgets totalled \$3,467,731.50 for the pool cover and \$7,157,191.00 for the arena.

In his testimony, Mr. Barrow explained that when BLT priced a project, it usually determined the cost of completing the project and then added profit markups of 15–18 percent to the budget's line items. He testified that this range was a standard markup in the construction industry. He stated that, for the Collingwood pool and arena budgets, he added a markup of only 8–9 percent because he expected the final markup to be in the range of 15 percent once Green Leaf's success fee was applied.

Mr. Barrow gave inconsistent evidence about his knowledge of Green Leaf's fee at this time. He initially testified he did not ask Green Leaf about

its fee because he had been told the company would specify its fee later. He explained he anticipated that Green Leaf would charge BLT a fee of around 7 percent, an estimate based on a typical real estate commission. Later in his evidence, under cross-examination, Mr. Barrow agreed with Mr. Bonwick's suggestion that he knew at this time that BLT had agreed to pay Green Leaf a 6.5 percent commission.

I reject Mr. Barrow's evidence that he knew Green Leaf's fee when he prepared the August 21 budgets because, at the time he provided the draft budgets to Mr. Bonwick and Ms. Stec on August 21, he asked Green Leaf to tell him its fee.

Green Leaf's Response to BLT's Budgets

Mr. Bonwick emailed Mr. Barrow, Ms. Stec, and Mr. Watts at 11:17 a.m. on August 21, requesting a telephone call later that day. He added:

The situation is very fluid at this time and requires our attention and input by end of day if we are to achieve a favorable outcome Monday. There is a considerable movement wanting a deferral providing an opportunity for a third party to make a recommendation, ie ... architect.

Ms. Stec, Mr. Barrow, and Mr. Bonwick stated that the "movement" referred to in the email was to supporters of the Steering Committee's multi-use recreational facility. Neither Mr. Barrow nor Ms. Stec recalled a phone call following this email.

Thirty minutes after Mr. Bonwick sent this email, Mr. Houghton sent Mr. Bonwick the preliminary budgets that Sprung had provided to Deputy Mayor Rick Lloyd and Mr. Houghton on July 16. Sprung's preliminary budgets for a new arena and covering the outdoor pool totalled \$7,310,904 plus HST.

Mr. Bonwick testified that he could not recall why Mr. Houghton sent him these budgets. Mr. Houghton told the Inquiry he forwarded them to Mr. Bonwick because a BLT representative had asked for them. Mr. Houghton further explained:

When I handed them over I said, you know, these are the estimates. And ... we're hoping that the pricing that we get back from Sprung BLT is close to these kinds of estimates without, you know, a huge departure for good reason.

However, when Mr. Houghton emailed the July 16 Sprung budgets to Mr. Bonwick, he attached them without comment.

Mr. Bonwick forwarded the budgets to Mr. Barrow at 1:10 p.m. the same day, stating:

Please review the original numbers that were sent to the Town. Unless there is some significant explanation (three million dollars higher than original) they will undoubtedly take the view that we are trying to gouge as a result potential sole source. This is a deal breaker in the current format!

I look forward to chatting at 3pm.

At the hearings, Mr. Bonwick testified that when he sent the email, his primary concern was that Town representatives would be upset to learn that the prices proposed by BLT were higher than Sprung's July estimates:

I had been trying to consistently reinforce the idea that Council embrace one solution and move forward with one solution in order to deliver the recreational amenities. If there's a chance of that happening based on, to some degree, my efforts, changing a price ... without a reasonable explanation would compromise that or has the potential, at least, to compromise that.

Mr. Barrow testified that Mr. Bonwick was worried that the Town would believe it was being overcharged because the Town was not initiating a competitive procurement process. At that time, he thought the Town was considering only Sprung structures and a multi-use recreational facility.

At 2:53 p.m. that day, Mr. Barrow responded to Mr. Bonwick's email, listing a number of items from BLT's cost estimates that were not included in Sprung's July 16 estimates. Many of these items related to the installation

of a second floor in the facility. As I discuss in Part Two, Chapter 11, WGD had not been asked to cost a second-floor mezzanine for the arena in the estimates it prepared for the Town in August 2012. Staff made last-minute adjustments to WGD's estimates to account, among other things, for a second-floor mezzanine.

Green Leaf's Success Fee Included in the Budgets

Mr. Houghton emailed the Executive Management Committee at 4:41 p.m. on August 21, advising that he had just spoken with "Sprung BLT" and had asked them to provide "a total turn key price for both buildings and the non-building items. I have no clue what the price is because I didn't want them to tell me until it is in the form we want." Mr. Houghton also noted that he asked them to prepare a presentation for the August 27 Council meeting. I discuss this presentation in Part Two, Chapter 12.

Ms. Stec emailed Mr. Barrow at 4:58 p.m. on August 21, writing:

Thanks for taking the time to participate in both calls today and getting the numbers back to us. Once you have put the numbers in the format that Ed suggested, please put 6½ percent across the board on all the number [sic] reflecting the Green Leaf compensation. At that point the numbers can be sent to Ed. If you are ok with the BLT / Green Leaf agreement[,] please sign it and send it back to us at your earliest convenience.

Mr. Bonwick dictated key portions of this email, particularly the 6.5 percent markup and the phrase "across the board." Ms. Stec testified that Mr. Bonwick had discussed the commission with her around this time, and that she was "a little taken aback because ... the number was so large." She said that Mr. Bonwick explained that the number was high because the project could take years to come to fruition and there was a risk it would not materialize, with the outcome that they might not get paid at all. On cross-examination, Ms. Stec agreed that the fee was for Mr. Bonwick bringing a sole-source contract to BLT.

In his closing submissions, Mr. Bonwick argued that Green Leaf's fee was based on Council's past hesitance to build new recreational facilities,

the possibility that Council's decision on the Sprung facilities might take a long time, and the fact that success for Sprung / BLT in Collingwood would be the start of a province-wide business model that included Green Leaf.

Mr. Barrow testified that BLT added 6.5 percent across the board in accordance with Ms. Stec's email.* Green Leaf's resulting success fee totalled \$756,740.42, including HST.

Both Mr. Bonwick and Mr. Barrow testified that Green Leaf's fee was paid out of BLT's profits from the Collingwood arena and pool, despite the fact that they did not discuss what Green Leaf's fee would be before BLT applied its markup to the project budgets or how BLT calculated its markup. Further, Mr. Bonwick testified that he did not review BLT's budgets before they were provided to Mr. Houghton, nor did he have any discussions with BLT about how the totals were generated or whether BLT had applied any markups to that pricing. Mr. Bonwick claimed he told BLT that Green Leaf's fee "would not be borne by the municipality." As well, he relied on certain provisions in the Green Leaf / BLT contract to support his position that Green Leaf's work for BLT did not increase the Town's costs for the two construction projects.

I do not accept this evidence for three reasons.

First, the contract did not provide that Green Leaf's fee would not increase the Town's costs. As discussed above, the contract provided that BLT would pay Green Leaf as soon as it received the first payment from the Town, and that BLT would pay Green Leaf directly. Although these provisions ensured that the Town wouldn't see BLT's payment to Green Leaf, they did not ensure that Green Leaf's fee would in no way increase the Town's costs. Further, the only contemporaneous evidence the Inquiry received about the negotiation of the payment provisions of the BLT / Green Leaf agreement were the emails in which Mr. Bonwick insisted that BLT pay Green Leaf's fee in full once BLT received the Town's first payment. The lack of contemporaneous evidence of any discussions between Green Leaf and BLT about the impact of Green Leaf's fee on the Town's costs undermines the notion that such discussions took place.

* BLT also made other adjustments to the budgets.

Second, BLT's budgets were estimates. Because BLT did not know its actual costs, it could not know its actual profit margin, and therefore could not reduce that profit margin to pay Mr. Bonwick.

Finally, if BLT was willing to lower its profit margin to pay Green Leaf in order to secure the Town's business, it may have been willing to offer a lower price if it had to tender a bid or a proposal through a competitive procurement process or if it had to negotiate with the Town to lower the cost of the projects in order to secure those contracts. In other words, if BLT was willing to accept a 6.5 percent discount in its profits to pay Green Leaf, then the Town may have paid 6.5 percent more than it could have.

The structure of Green Leaf's fee, combined with the evidence before the Inquiry, means it is not reasonable to rule out the possibility that the Town paid more for the Sprung facilities than it would have but for Mr. Bonwick's involvement.

The BLT Budgets Go to the Town

The next morning, Ms. Stec emailed Mr. Barrow, writing: "As per my voice mail please get the numbers to Ed ASAP." Mr. Barrow sent Mr. Houghton the budgets for the pool and the arena at 1:39 that afternoon. In response, Mr. Houghton asked Mr. Barrow to give him totals, "(e) pool, mezzanine for pool; ice pad, accessories, and then the overall total." Mr. Barrow sent Mr. Houghton "final Numbers for both arena and pool buildings," asking him to "[p]lease review and let me know." The revised budgets totalled \$11,630,416.94 (\$7,896,303.82 for the arena and \$3,734,113.12 for the pool). These budgets included Green Leaf's 6.5 percent fee. Mr. Houghton forwarded these budgets to Town Treasurer Marjory Leonard, who in turn forwarded them to Dave McNalty, the Town's manager of fleet, facility and purchasing.

The Staff Report

From August 17 to 23, 2012, the staff report drafting process took place on two parallel tracks. Town Treasurer Marjory Leonard created the first draft of the report, adding pertinent information as she received it from Ed Houghton, the acting chief administrative officer (CAO), and Dave McNalty, the manager, fleet, facilities and purchasing. Meanwhile, Mr. McNalty also made changes to drafts of this report in consultation with Mr. Houghton. Mr. Houghton passed drafts of the report to Deputy Mayor Rick Lloyd. At this early stage, neither Sara Almas, the Town clerk, nor Marta Proctor, the director of parks, recreation and culture, were involved in the drafting of the staff report.

Ms. Leonard delivered her last draft to the Executive Management Committee (EMC) and Mr. McNalty on the afternoon of August 23. Mr. McNalty then made significant alterations to the report that same night. Mr. Houghton revised Mr. McNalty's new draft on the morning of August 24 and finalized the report in the early afternoon following a meeting with Mr. McNalty and the EMC. Although Mr. McNalty held the pen for some significant revisions, he and Ms. Almas agreed that Mr. Houghton took control of the staff report toward the end of the drafting process. Mr. Houghton made the final edit and had the final sign-off on the report.

Under Mr. Houghton's direction, the thrust of the report changed significantly. Initially the report was a summary of information that could form the basis of a request for proposal (RFP) for each of the two projects – the arena and the pool – along with rough cost estimates provided by the Town's consulting architect, WGD Architects Inc. By the end, the report recommended sole sourcing a design-build contract for Sprung pool and arena facilities, supporting that recommendation with a skewed and inaccurate

presentation of both BLT's project budgets and the costs of other recreational facility options. The report also did not identify that the Town would contract with BLT Construction Services Inc., as opposed to Sprung, for construction of the facilities.

Responsibility for Drafting the Report

It is clear that staff were scrambling to complete the research and write the staff report in time for the August 27 Council meeting. Ms. Proctor stated at the hearings: "There was [*sic*] so many hands in the pot and things changing that didn't follow proper protocol or procedure." She further testified that, while she believed it was her responsibility to "frame and ensure that [the] report provided all the necessary information," she had indicated to staff her concerns about Council's tight timeline in light of her upcoming planned vacation, scheduled from July 23 to August 7 and from August 22 to August 24. As I discuss in Part Two, Chapter 5, Mr. Houghton had agreed to Council's deadline and said that, despite Ms. Proctor's concerns, the EMC and Mr. McNalty would complete the report. Nevertheless, Ms. Proctor testified that she worked hard with Mr. McNalty to set the foundation for WGD to provide the information for the report. She learned, however, that Mr. Houghton was also directing Mr. McNalty and that Mr. Houghton would be the sole contact with Sprung.

Ms. Leonard said she became involved in the staff report at Mr. Houghton's direction and that the report was overseen by Mr. Houghton. She explained she wrote drafts, sent them to the EMC for comment, and implemented changes. She drafted the text while Mr. McNalty gathered numbers and other component information; Dennis Seymour and Darrin Potts, employees in the Parks, Recreation and Culture Department, researched operating costs; and Mr. Houghton obtained information from Sprung. Ms. Leonard said she had never before drafted a staff report relating to construction. She did not understand why she was assigned to the report, other than the fact that Ms. Proctor was on vacation. Ms. Leonard testified that, while she could "wordsmith" the information other staff provided, she did not have the experience to conduct research or provide background information.

In his testimony, Mr. McNalty said he was not assigned to work with WGD or to work on drafts of the staff report. He thought his continued involvement was assumed because he had provided some assistance to the Central Park Steering Committee and attended early meetings with Sprung. As he put it in his evidence, “[N]obody assigned me to be involved. I just stayed involved.”

Ms. Almas testified that Mr. Houghton, Ms. Leonard, and Mr. McNalty were primarily responsible for preparing the August 27 staff report. She said she understood that Ms. Leonard and Mr. McNalty were acting under Mr. Houghton’s direction. Ms. Almas thought that Ms. Proctor was frustrated with Council’s decision to disregard the work of the Central Park Steering Committee and with Mr. Houghton’s control of the staff report’s recommendations because “they were her responsibility and not Mr. Houghton’s expertise.” As she explained:

Ed took complete control, and ... I think that was extremely hard for her, because again she was the one with the expertise and she’s kind of blindly providing as much information as she can on costing, needs, operational costs, staffing, so there was a frustration.

Mr. McNalty testified that Ms. Proctor would normally have been in charge of the report. However, given her limited availability at the time, he believed that “other staff kind of picked it up and carried on with it.”

In his evidence, Mr. Houghton said the EMC took over the staff report from Parks, Recreation and Culture staff after the July 16 Council meeting and that the EMC members together decided on the direction of the staff report. He testified that he became involved only at the “very end.”

I am satisfied that Mr. Houghton provided direction on the staff report well before the end of the process, even if he did not make any edits himself until the final drafts. This close supervision is reflected in his questioning of WGD’s involvement in staff’s work (see Part Two, Chapter 7), his meetings and discussions with BLT and Green Leaf Distribution Inc. (see Part Two, Chapter 8), and his discussions with Deputy Mayor Rick Lloyd (see below). As Ms. Proctor testified: “[T]he clearest source of information that was coming down on this topic was through the Deputy Mayor. He was the champion behind this and was giving direction to the CAO.”

Mr. Houghton should have pushed back against Council's tight deadline to allow staff sufficient time to complete their research (see Part Two, Chapter 5). Instead, he took control of the staff report and steered it toward sole sourcing the Sprung recreational facilities.

Staff Research

Staff testified that their research into fabric buildings and Sprung primarily consisted of internet research. Some assumed other staff had undertaken more comprehensive research. No witness provided a complete explanation of the contents or the source of the information staff collected.

Mr. Houghton, the Town's sole contact with Sprung from July 25 onward, testified that he made no enquiries into the nature of the partnership between Sprung and BLT, explaining that he did not differentiate between the two companies. He stated that he did not review BLT's website, ask if BLT had ever built a pool or an arena, or otherwise investigate BLT. He said the only steps he took to investigate Sprung were speaking with Sprung representatives and reviewing the Sprung website. Mr. Houghton noted he did not contact any references for Sprung, nor was he aware of staff contacting any of Sprung's references. In explaining why he was comfortable proceeding with BLT and Sprung, he testified:

I guess I took it on faith in a sense that Sprung, which was a Canadian company, one that appeared to – when I googled their company, they had a lot of pride in what they were doing.

I don't think that they would have aligned or associated themselves with a company that was not reputable in any way, shape, or form.

Mr. McNalty testified he relied on research he had previously conducted into covering the outdoor rink with an "agricultural-style building," which he described as "a steel structural frame, so like a truss system with a membrane on the outside of the trusses." He also stated he conducted "maybe half a day" of internet research focused on "whether there was anybody else that was marketing a membrane style structure or a fabric structure that was

specifically intended to cover sports facilities.” He could not recall if he asked Sprung if they had any competitors, and he did not know whether any other staff members were investigating that issue either. Mr. McNalty did not recall speaking with staff at other municipalities that had recently built arenas or pools to discuss their experiences. Though he testified he understood there were “perhaps” three or four Sprung arenas in Canada and another “half dozen or so in the U.S., maybe,” he did not speak to any of those users. No draft of the staff report suggested that anyone from the Town sought that information.

Ms. Almas testified she looked at Sprung’s websites early in the process and felt the structures were unique. She said she thought Ms. Leonard was doing formal research into competitors. She also knew that Mr. Houghton and Mr. McNalty did research, but she was not sure what they did beyond internet research.

Ms. Leonard testified she conducted a few hours of online research. She said all the information on fabric structures that ended up in the staff report came from Sprung. Similarly, Ms. Proctor testified she believed the only research staff did on enclosing the outdoor pool “was on the Sprung structure through Sprung.”

Abby Stec, the president of Green Leaf,^{*} testified that, between July 30 and August 27, she worked with Mr. Houghton on his presentation to Council and provided him with research she had previously done comparing fabric structures from Sprung, Yeadon Fabric Structures Ltd, and the Farley Group while she worked at the Pretty River Academy.[†]

Mr. McNalty noted that, as acting CAO, Mr. Houghton could recommend to Council that staff undertake further investigation into construction options for a pool and an arena. When asked whether he thought such a recommendation would have been beneficial, Mr. McNalty stated, “Further investigation would certainly have been beneficial, but the time frame for the report was set.”

* As I describe in Part Two, Chapter 6, Paul Bonwick was Green Leaf’s majority owner.

† The Pretty River Academy is a private school in Collingwood.

Stakeholder Consultation

Ms. Leonard and Ms. Proctor testified that staff did not consult with stakeholders during the drafting of the staff report. Ms. Proctor said she raised concerns that the pool and arena projects which Council directed staff to consider had not been taken to the community.

As I discuss in Part Two, Chapter 15, the plan to cover the existing pool did not fulfill the needs of the Collingwood Clippers competitive swimming club. Information about the community's aquatic facility requirements was available to Council, as illustrated by an August 27, 2012, email exchange between Councillor Dale West and a member of the public, who wrote that the staff report

does not deal with the issue of the tank, deck, filtration and existing in-ground infrastructure, not to mention whether it matches the criteria needed by this town for an indoor pool. The Centennial pool is a 5 lane concrete [*sic*] tank and deck which does not satisfy provincial and national competition standards. It can never be a sanctioned [*sic*] competitive pool.

Sandra Cooper testified, as mayor at the time, she sought to ensure that the public was aware of Council's decision: she "wanted the opportunity for the public – anyone from the public, if they so wish, to give their input, that they had that ability." She stated that the public was given that opportunity before August 27, explaining:

There is an opportunity for deputations to Council, a request of ... deputations. It would – it was – and it still is today, I believe, on the Town's website that you can submit a form – filled [*sic*] out a form and submit to the clerk's department in requesting a deputation, and then they can come forward.

Ms. Cooper also specifically referenced the June 11 workshop and the July 16 Council meeting as opportunities for public input. Although both events

were public, and a resident could have requested to speak at the July 16 meeting, neither meeting was intended to solicit information and feedback from the public. Finally, Ms. Cooper explained that by “being in the community ... in the grocery store, I’m always engaged ... in opinions shared.”

Overview of the Initial Drafting Process

The staff report was drafted in less than a week. Ms. Leonard and Mr. McNalty produced multiple drafts, sometimes simultaneously, while they each had separate discussions with Mr. Houghton. Moreover, through Mr. Houghton’s oversight of the drafting process, staff were exposed to influence from Deputy Mayor Rick Lloyd. The parallel drafts and tight timeline led to last-minute changes. In this chapter, I provide an overview of the drafting process and, in the next chapter, I discuss the changes made between drafts in more detail.

Ms. Leonard’s First Draft

On August 17, Marta Proctor, Sara Almas, Marjory Leonard, and Dave McNalty arranged to meet to discuss recommendations for the Central Park staff report. Ms. Leonard testified she did not recall what happened at this meeting. She said that, by this point, Mr. Houghton had already directed her to write the first draft the staff report. Mr. Houghton did not recall assigning this task to Ms. Leonard, suggesting that she took it upon herself to draft the report.

The next day, Ms. Leonard sent her first draft of the staff report to the EMC, Mr. McNalty, Ms. Proctor, and Mr. Houghton.

After reviewing Ms. Leonard’s August 18 draft, Mr. Houghton emailed Mr. McNalty: “I think you and I need to have a discussion and get moving in the same direction.” Mr. McNalty responded that he agreed, asked Mr. Houghton if a cost comparison between the arena options was still advisable, and told Mr. Houghton to call him the next day.

Mr. Lloyd's Reaction to the First Draft

On August 19, Mr. Houghton sent Ms. Leonard's August 18 draft to Rick Lloyd, with the message: "Take a look at this. I've not read it yet but will but I'm gonna ask Marjory to flip it to you as well." Mr. Lloyd responded with proposed revisions, which I discuss below.

Ms. Almas, Ms. Proctor, and Mr. McNalty all testified they were not aware that Mr. Houghton shared a copy of the staff report with Mr. Lloyd.

Ms. Leonard testified that, when Mr. Houghton asked her to send her draft to the deputy mayor, she initially "put up some resistance" and said the draft "wasn't fully flushed out." Later, however, she relented and told Mr. Houghton she would send it to Mr. Lloyd after she had "polished" it. When asked at the hearings why she initially resisted sending the report to Mr. Lloyd, Ms. Leonard responded:

It's not a normal procedure to ... share the draft with a member of Council ... or, for that matter, to ... share a staff report with a member of Council without all Council getting it ... It gave one Council member an advantage over ... the others. And there could have been potential for that Council member to interfere with any type of – or to taint, actually, I guess, the process of an RFP in ... some way ... or shape or form.

Ms. Leonard testified she expressed these concerns to Mr. Houghton, who responded by repeating his direction to send her draft to the deputy mayor.

As I discuss below, Mr. Lloyd provided suggestions that, when implemented, changed the tone and content of the staff report.

Mr. McNalty's Revisions to the First Draft

Mr. McNalty revised Ms. Leonard's first draft and, on the evening on August 19, sent it to Mr. Houghton. He also attached his first draft of a spreadsheet comparing the costs of various recreational facility options. I discuss Mr. McNalty's chart in greater detail in the next chapter.

In his covering email, Mr. McNalty asked Mr. Houghton to "[l]ook in the body of the report and please let me know if this direction is what you intend before I get further along." He also told Mr. Houghton, "I have not

distributed this elsewhere at this point pending your approval and suggestions.” Ms. Leonard testified she was not aware that Mr. McNalty was communicating privately with Mr. Houghton about revisions to her first draft of the staff report and did not know about the specific modifications that were occurring. Later, when she learned of the modifications, she became concerned that, because she was one of the authors of the report, Council would ascribe the changes in part to her, even though she had not made them.

Ms. Leonard sent her second draft of the staff report to Rick Lloyd on August 20, stating, “I did some polishing on the report but I still don’t have any numbers. Let me know what you think!” This draft did not incorporate any of the content or cost estimates from Mr. McNalty’s first draft.

Mr. Lloyd and the Houghton / McNalty Revisions

The direction of the staff report changed after Mr. Houghton invited Deputy Mayor Lloyd to provide feedback. Ms. Leonard’s initial August 18 draft contained sections describing “pros and cons” for the proposed pool and arena structures. The only listed advantage for a fabric-covered pool was “turnkey operation.” Disadvantages for the pool included: “We could find no other pools of this construction in Ontario” and “We do not have experience operating a year-round pool of this nature.”

After Mr. Houghton sent him a copy of Ms. Leonard’s initial draft, Mr. Lloyd responded with proposed revisions. Among them he stated: “I also see some other areas that need reworded [*sic*]. le ‘no other pools in Ontario of this construction’ I would rather indicate that there are many pools in north [*sic*] America with this construction.”

Later that day, Mr. McNalty revised Ms. Leonard’s initial draft of the staff report. His draft added the following sentence under the “pros” section for a fabric pool: “There are several successful swimming pool applications utilizing this type of construction identified across North America.” The new passage bears a striking resemblance to Mr. Lloyd’s suggested revision. Mr. McNalty testified he was not aware of the deputy mayor’s email to Mr. Houghton, and he had no recollection of being asked to add the sentence to the report by either Mr. Lloyd or Mr. Houghton. He acknowledged, however, that the sentence may have been added at their request.

The following day, August 20, Ms. Leonard completed a second draft of the staff report. This draft stated, “We could find no other pools of this construction in Ontario. There are, however, many in the U.S., and other areas of the world.” Ms. Leonard testified that, aside from sending Mr. Lloyd a version of the staff report by email, she had no interactions with him regarding the contents of the staff report. She further stated that the revisions noted above were likely dictated to her by Mr. McNalty or Mr. Houghton.

In suggesting revisions to Ms. Leonard’s first draft of the staff report, Mr. Lloyd also told Mr. Houghton: “I find there is a little negative spin on some of her report. I don’t think it is intentionally done that way but it needs the Ed Houghton positive spin in a redraft.”

Immediately following Mr. Lloyd’s email response to Mr. Houghton, the draft reports created by Mr. McNalty and Ms. Leonard were marked by a notable change in tone with regard to the description of fabric membrane structures. Mr. McNalty’s draft added a description of the strength of the construction materials used in the fabric structures and the effectiveness of their insulation. This passage survived through the drafting process and appeared in the final version of the report. Meanwhile, Ms. Leonard’s draft added the following statement:

[T]here are many advantages to becoming an early adopter or trend-setter for new concepts and technologies. The relationship with customer and vendor is synergistic. The customer is exposed to the problems, risks and annoyances of “being first” and is usually rewarded with especially attentive vendor assistance or support, preferential pricing, and favourable terms and conditions. The vendor benefits from receiving revenues, the customers’ endorsement and assistance in further developing the product or its marketing program.

Mr. Lloyd also advised Mr. Houghton that the report “must be careful not to give too much information.” As I discuss later in the Report, details regarding the components and pricing of the recreational facilities were removed from the final draft of the staff report that was submitted to Council for its evaluation (see Part Two, Chapter 11).

Although neither Mr. McNalty nor Ms. Leonard specifically recalled

having direct contact with Mr. Lloyd regarding the staff report, it is evident from the contents of the report drafts that the deputy mayor's revisions were implemented. Mr. Lloyd's revisions served to paint Sprung in a more positive light, making the notion of building Sprung recreational facilities more palatable.

Mr. Lloyd's interference contributed to the skewing of the staff report away from an impartial assessment of the recreational facilities that best fit the Town's needs. The staff report presented to Council was more consistent with the deputy mayor's wish that Council authorize the purchase of Sprung facilities. Mr. Lloyd should not have involved himself in the drafting of the staff report and, as the Town's most senior staff member, Mr. Houghton should not have enabled his interference. Mr. Houghton's closing submissions provided two explanations for the reason he forwarded the draft staff report to Mr. Lloyd. First, he noted that, at the July 16 Council meeting, "Mr. Lloyd went on the record and indicated that he wanted to be involved and there was no objection to his proposed involvement." Second, Mr. Houghton submitted that he sent Mr. Lloyd a copy of the report because the deputy mayor was the chair of the Finance Committee.

These explanations do not justify Mr. Houghton's decision to involve Mr. Lloyd in staff's reporting and recommendations to Council. As I discuss in Part Two, Chapter 5, the lack of Council objection to Mr. Lloyd's suggestion that he "work with Staff and our CAO ... to look at covering our Centennial Pool and a new ice pad at Central Park" did not constitute Council approval of his involvement in the staff's work to evaluate Council's selected options. Similarly, his role as chair of the Finance Committee did not entitle him to interfere with staff's efforts to provide objective information and recommendations to Council.

Mr. Lloyd testified he "wasn't trying to change the intent of the ... staff report." He said he did not believe that his involvement in the report writing process "influenced Council's decision one iota" and added: "I can assure you that Marjory Leonard would not have made any changes to the staff report if she didn't think it was appropriate." I do not accept these arguments. The very fact that Mr. Lloyd proposed revisions to the staff report demonstrates an intent to change its contents. The implementation of these revisions affected the tone and content of the staff report and, consequently,

influenced how Council arrived at a decision with regard to the new recreational facilities. Finally, I do not accept Mr. Lloyd's attempt to justify his interference by relying on Ms. Leonard. It was Mr. Lloyd's responsibility to avoid interfering with the staff report.

Mr. Lloyd also argued in his closing submissions that his involvement in the staff report was justified because it was "common practice for staff to communicate with and engage the council member(s) who made requests or motions to ensure that their efforts met the council member's intentions." I do not accept this argument. It is never appropriate for a specific councillor to seek to influence how staff presents its research and recommendations to Council.

Ms. Leonard's Further Revisions

On August 21, Ms. Leonard sent her third draft of the report to Mr. McNalty. This draft combined the revisions from Ms. Leonard's second draft with those in Mr. McNalty's first draft and included some new passages. One hour later, Ms. Leonard sent a substantially similar fourth draft of the report to Mr. Houghton, which he forwarded to Deputy Mayor Lloyd approximately 10 minutes later with no comment.

As I discuss in Part Two, Chapter 9, Dave Barrow, the executive vice-president of BLT Construction Services, sent Mr. Houghton budgets for a Sprung arena and pool cover on August 22. After receiving BLT's budgets, Mr. McNalty updated his spreadsheet comparing the costs of the recreational facility options and forwarded it to Ms. Leonard on August 23. Shortly after receiving it, Ms. Leonard sent her fifth draft of the report to the EMC, Mr. McNalty, and Mr. Houghton with this question: "Can we perhaps discuss this one shortly after lunch? I am just about written out!" Ms. Leonard testified that no meetings regarding the staff report took place on the afternoon of August 23.

Mr. Houghton and the BLT Estimates

While senior staff at the Town expected the recreational facilities to go through an RFP process, Mr. Houghton continued to pursue BLT to provide final estimates for a Sprung arena and pool (see Part Two, Chapter 9). This behaviour was inconsistent with a competitive procurement process.

Ms. Leonard testified that it was inappropriate for Mr. Houghton to be soliciting pricing from a vendor so close to the completion of the staff report. She said the appropriate time to solicit estimates from potential RFP suppliers was during a “market research” phase that ended long before the completion of the staff report. Ms. Leonard stated she did not raise these concerns with other staff members at the time because the staff report deadline was imminent and the Sprung prices were the only information available. She said she made no request for an extension to the deadline because she didn’t “believe it would have done any good.” Mr. Houghton, she explained, was preoccupied with meeting Council’s deadline and was pressuring Ms. Leonard to complete the report.

Earlier, Ms. Leonard testified she would likely have sought more time to complete the report if she had not been concerned “in the back of her mind” that she could lose her job. She explained that, after Kim Wingrove’s employment as chief administrative officer was terminated the previous April, several staff members feared for their job security if they pushed back against Council’s directions.

Though he did not recall having concerns at the time, Mr. McNalty agreed that it would have been preferable for Town staff to receive the BLT costing information “much sooner” when staff were investigating potential suppliers. He testified that, once Town staff begin formulating an RFP process, a “blackout period” commences during which no information should flow between the Town and potential bidders. The purpose of this period is to protect against a perception that the Town is providing an unfair advantage to a specific bidder. Mr. McNalty believed that the timing of BLT delivering their budgets risked creating a perception of unfairness.

Ms. Almas did not share Mr. McNalty’s and Ms. Leonard’s concerns because she was under the impression that Sprung’s structures were a “one

of a kind” product and this allowed staff to seek an estimate for that product.

As I note in Part Two, Chapter 8, Ms. Leonard was right to be concerned about the path the Town was pursuing with BLT. It was not appropriate for Mr. Houghton to be seeking quotes from a specific supplier at this time if the Town wanted to pursue a competitive procurement process. Asking BLT to effectively “bid” at this point impaired the Town’s ability to run a competitive process effectively. As I discuss below, although the draft staff report at this time contemplated an RFP, the Town’s discussions with BLT signalled a sole-source procurement.

When Ms. Leonard delivered her fifth and last draft of the staff report to Mr. Houghton, Mr. McNalty, and the other members of the EMC on the afternoon of August 23, it continued to contemplate a competitive procurement process. By the following morning, the staff report’s approach to procurement had dramatically and unexpectedly changed.

Competitive Tender Process Anticipated

Ms. Leonard, Ms. Proctor, Ms. Almas, and Mr. McNalty testified that, during the initial phases of the staff report drafting process, they expected that the Town would select a recreational facility supplier by way of a competitive procurement process. This expectation was reflected in the drafts of the report up to and including Ms. Leonard’s August 23 draft, all of which included language contemplating that the Town would issue RFPs for the pool and the arena if Council chose to proceed.

As I discuss in this chapter, various alterations were made in the text during the initial drafting phase of the report. These changes shifted the report from an objective discussion of the available options to a document advocating for the construction of Sprung facilities using a design-build contract. This shift in tone was consistent with Deputy Mayor Lloyd’s directions to Mr. Houghton. Ms. Leonard testified that she included an RFP process in the first draft after discovering two other fabric structure companies through internet research.

Ms. Proctor testified she understood at the beginning of the drafting process that there would be a competitive tender to identify a builder for the

structures. However, she did not recall any discussions about procurement at that time.

In his testimony, Mr. McNalty said he did not recollect any procurement process discussions at the time of his first draft. Still, he assumed that, after Council decided which construction type it preferred for recreational facilities, there would be an RFP process to locate specific suppliers. When asked on what he based this assumption, he responded that an RFP was “a reflection of the typical process.”

While certain staff expected the recreation facilities to be procured by RFP – and for good reason – by the time the staff report was being finalized, the Town’s ability to implement a competitive process had been impaired. Mr. Houghton had already given BLT a significant advantage by meeting with them, consulting with them on design components, and asking them to submit a detailed proposal for the arena and the pool (see Part Two, Chapter 8).

A Last-Minute Change in Direction to Sole-Source Procurement

At 5:59 p.m. on August 23, Mr. McNalty sent an email to Mr. Houghton and the EMC stating he was “[w]orking on another draft. Same information but a different approach to the report.” Ms. Almas replied, asking if she should work on “a couple of ‘recommendation’ scenarios,” but Mr. McNalty told her to wait. Within six hours, he completed a new draft of the staff report that differed in many crucial respects from all the previous drafts.

At 11:44 that same night, Mr. McNalty sent the revised draft of the staff report to Mr. Houghton and the EMC. I discuss the significant changes in the report in the next chapter, but most critically, the new draft no longer contemplated a competitive procurement. Instead, it suggested that the Sprung facilities be procured by way of sole source.

Mr. McNalty testified that his “new approach” consisted of reorganizing information, though he also added that the substantive changes were likely the result of directions he received. Before revising the report, Mr. McNalty spoke with Mr. Houghton around 6 p.m. He recalled they discussed taking a new approach to the report, but he could not remember the specifics of the conversation.

Mr. Houghton testified that, by the time they spoke at 6 p.m., Mr. McNalty had already “rebundled” the information in the report. He further testified that he and Mr. McNalty discussed a number of elements in the new draft, such as removing operating costs and detailed cost comparisons between pre-engineered steel and fabric arenas, and adding information regarding a possible second floor to a new arena (see Part Two, Chapter 11).

Shortly after their call, Mr. McNalty sent Mr. Houghton an email asking: “Is your thinking that the procurement is done? Or that we still need to go through the process of an RFP or something?”

Both Mr. McNalty and Mr. Houghton testified that they did not discuss procurement during their phone call. Mr. McNalty stated that, after the call, he began reviewing the staff report and realized that the procurement process was “an unanswered question.” That gap prompted him to send Mr. Houghton the email asking about procurement. He did not recall receiving a direct response. Mr. Houghton confirmed he did not reply to Mr. McNalty and, instead, phoned Ms. Leonard around 8 p.m.

Phone records indicate that Mr. Houghton and Ms. Leonard had a telephone call that lasted six minutes and 35 seconds shortly after 8 p.m. that evening. Within a half hour of this call, Ms. Leonard sent the following email to Mr. McNalty, Mr. Houghton, and the other members of the EMC:

Dave, I think we have done our due diligence for procurement purposes already.

We supplied our wish list to BLT / Sprung and they were aware that they were competing against two other forms of construction. Nobody possesses the Tedlar technology; nobody else can prove that they have done this type of construction without collapse; nobody else can provide the LEED components in their basic construction.

Mr. McNalty testified that he removed the references to a competitive procurement in the draft report after receiving Ms. Leonard’s email. Ms. Leonard and Mr. Houghton had conflicting recollections about what led to this email.

Ms. Leonard testified that, during the phone call, Mr. Houghton described the steps he and Mr. McNalty had taken to determine whether

“due diligence had been completed.” She said she did not understand him to be asking her for advice, explaining that she believed Mr. Houghton “was convincing me that the procurement process that they were undertaking had been done in ... a correct manner.” She was not aware of anyone on staff verifying any of the information set out in her email, although she herself had done some online research.

In addition, Ms. Leonard recalled that Mr. Houghton convinced her to draft an email describing the approach to procurement they had discussed and to send the email to Mr. McNalty. She testified she did not understand why Mr. Houghton was asking her to send the email. It seemed to her that Mr. Houghton was expressing his and Mr. McNalty’s opinion on procurement to her without informing the rest of the staff, and then asking her to send an email that would indicate the opinion came from her. She stated that Mr. Houghton did not explain to her why it was necessary for her to send the email, but she did not ask him why he could not be the one to relay the information.

Mr. Houghton, in contrast, testified that, after he received Mr. McNalty’s email asking about procurement, he called Ms. Leonard to ask her opinion on procurement processes. He stated he did not dictate his position on procurement to her. Rather, Ms. Leonard advised him that, in her view, all necessary due diligence regarding recreational structures had been completed. He said she offered to send an email expressing her opinion to the EMC.

I accept Ms. Leonard’s evidence. All five of her previous drafts of the staff report had assumed that an RFP would follow, including the draft Ms. Leonard prepared at noon on August 23. There is no evidence that she received any new information in the eight hours between completing her fifth draft of the report and her phone call with Mr. Houghton. There was no apparent reason for Ms. Leonard to depart from her previous approach to the staff report – one that involved a competitive procurement process.

I am satisfied that Mr. Houghton instructed Ms. Leonard to send the email. Mr. Houghton wanted the Town to sole source the two Sprung facilities. He also knew that Deputy Mayor Lloyd preferred this option. He told Ms. Leonard to send the email so it would not appear that he gave the direction. Mr. Houghton knew that sole sourcing a project such as this one did

not conform with typical Town procurement processes, and he wanted to avoid responsibility for the decision.

I am also satisfied that, to the extent the draft Mr. McNalty produced that evening contained substantive changes, these changes were made at the direction of Mr. Houghton (see Part Two, Chapter 11).

EMC Discussion of the Sole-Source Decision, August 24

Clerk and Treasurer Shocked by Change in Direction

During the afternoon of August 23, Ms. Leonard sent an invitation to Mr. Houghton, Mr. McNalty, and the other members of the EMC to meet and discuss the staff report at 8:30 am on August 24. She testified she called the meeting because the staff report had not been discussed that day, and she felt it needed to be finalized.

At 7:34 am on August 24, Mr. Houghton sent a revised version of the staff report to Mr. McNalty and the EMC. He did not make any changes to the sections relating to the type of procurement. The report still recommended a sole source.

Ms. Leonard and Ms. Almas testified that they first discovered that the staff report no longer recommended a competitive procurement process when they reviewed the revised report before the meeting that morning.

Ms. Almas testified she was “shocked” when she reviewed the staff report and discovered that all references to a competitive procurement process had been removed. She said she discussed the changes with Ms. Leonard in advance of the meeting and recalled Ms. Leonard telling her that “she received a call from Ed Houghton the night before, advising that he would like to ... go forward as a sole source procurement.”

Ms. Leonard testified that, after emailing Mr. McNalty about procurement in the evening of August 23, she did not do any further work on the report. When she arrived at work the next morning, Ms. Almas told her that the report had been changed. She then reviewed the version Mr. Houghton had circulated. With regard to the new and changed approach to procurement, Ms. Leonard stated:

I was ... stunned. Regardless of what wording or what had gone into it ... the portions about an RFP had ... been removed and it had become sole sourced ... [T]hat's really what shocked me. Not only sole sourced, but ... the pool was a fabric building for certain, but then the arena was now totally a fabric building as opposed to having Council decide what they wanted in terms of pre-engineered or bricks and mortar or a fabric structure there, as well.

The Meeting

Mr. Houghton, Mr. McNalty, and the EMC met at 8:30 am on August 24 to discuss the staff report. Mr. Houghton testified that the purpose of the meeting was to “gather the troops, make sure that the report is – is full.” He recalled discussions that the report did not yet include finalized recommendations nor did it contain a section on procurement. He stated that Ms. Almas offered to draft the recommendations, and Ms. Leonard volunteered to draft the procurement section. Mr. Houghton also testified that he agreed to make the final edit of the report and that Mr. McNalty explained how he arrived at the costs for the structures discussed in the report. Mr. Houghton told the Inquiry that, by the end of the meeting, “[c]onsensus was arrived at” regarding the contents of the report.

The other attendees had different recollections.

Ms. Leonard testified that Mr. Houghton used the meeting to explain that a sole-source procurement process was appropriate because the proposed recreational facilities were affordable and could fulfill the Town's need for an arena and an aquatics facility. She believed that an RFP process was still possible and would have not had involved a significant delay. However, she did not recall anyone at the meeting raising concerns about the use of a sole-source process. She testified that, by the end of the meeting, Mr. Houghton had persuaded her that it was appropriate to move forward with the revisions that had been made to the staff report.

Ms. Almas also recalled Mr. Houghton explaining at the meeting why the staff report had been changed to recommend a sole-source procurement. She stated that Mr. Houghton was “very charismatic and very influential, and basically was stating strongly the reasons why it was justified that we

went down this route.” Like Ms. Leonard, she said that, after listening to the information presented by Mr. Houghton, she was comfortable proceeding with the new version of the staff report. She added that she did not want to be the only attendee at the meeting to object to the staff report:

Ed was pretty powerful and pretty persuasive. And I ... trusted Ed at that time and I felt that it was ... good information and there was no reason for me to be at the last minute the person of the ... group to object to the decision.

Mr. McNalty recalled that the attendees engaged in a general discussion of the changes to the staff report, including the removal of references to an RFP. When asked what he understood to be the rationale for these changes, he replied, “I’m not sure if I understood what the rationale was, other than the direction that I had received the night before through the Treasurer’s email.”

In addition, Mr. McNalty testified that “there was no reason why” staff could not have chosen “specifications” for a design-build arena and pool, and then used an RFP process to determine whether to build fabric membrane or pre-engineered steel facilities. He acknowledged that, “from the point of view of having more fulsome information, [an RFP] would have been good to have.” Mr. McNalty also testified that, by the end of the meeting, there was consensus among the EMC with regard to the contents of the report.

Sole Sourcing Impaired the Town

Recommending a sole source was a radical departure from the Town’s bylaws, norms, and practices. As a starting point, the Sprung arena and pool did not meet the requirements for sole sourcing under the Town of Collingwood purchasing bylaw, which permitted sole sourcing where “there is only one known source for the Good or Services.” Sprung and BLT, however, were not the only known source of recreational facilities. For example, as confirmed by the WGD report, a pre-engineered steel supplier was capable of building an arena.

At the hearings, it was suggested that sole sourcing was appropriate because Sprung was the only supplier of insulated membranes that could

be used for recreational facilities. There are several problems with this suggestion.

First, as I discuss in Part Two, Chapter 14, Tom Lloyd, an Ontario regional sales manager at Sprung, was aware of a number of other companies that offer insulation with their fabric structures. Moreover, one of the purposes of a competitive procurement is to allow the market to inform the Town whether there are other suppliers.

Second, the Town's needs were not limited to fabric recreational facilities. Collingwood was searching for affordable recreational structures, and other builders may have been able to construct an arena that met the Town's needs at a lower price. Proceeding with a sole source deprived the Town of acquiring information concerning what the market had to offer. As Richard Dabrus, the principal in charge at WGD Architects, stated, a pre-engineered steel manufacturer may have comparatively bid, or even outbid, BLT and Sprung. Tom Lloyd testified that Sprung had participated in several competitive procurements before 2012 and was rarely successful. In short, the staff report's recommendations – directed by Mr. Houghton – to pursue a sole-source procurement of a Sprung insulated architectural membrane facility for a year-round single-pad ice arena at Central Park and a Sprung insulated architectural membrane structure over the existing Centennial Pool were essentially recommendations that the Town forgo the opportunity to obtain other viable competitive proposals.

On a separate note, the personal reactions of Ms. Almas, Ms. Leonard, and Mr. McNalty, expressed during the hearings, demonstrate that they knew a sole source was likely not appropriate in the circumstance. As described throughout this Report, some staff believed they were not in a position to challenge Mr. Houghton. Others had genuine concerns for their jobs if they resisted the views of Deputy Mayor Rick Lloyd which were being implemented by Mr. Houghton.

Ms. Leonard's Procurement Draft

Ms. Leonard testified that, at the morning meeting, she was asked to draft a section for the staff report dealing with procurement. At 10:46 a.m. that day, she sent Mr. McNalty, Mr. Houghton, and the EMC an email containing the following paragraphs:

In terms of our procurement process, staff have exercised due diligence in the research of potential forms of construction and feel that there would be no additional advantage to be gained from a further tender process for the following reasons:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew that they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structure when producing estimates.

Cost effectiveness and benefit to the Town: through the investigative process, it has been determined that the Architectural Membrane structure would provide the most cost effective and all inclusive solution to our needs.

Sole Source: again, through our research, it has been determined that there is only one supplier that can meet the specifications staff developed for the facilities.

If one of the more traditional forms of construction had been determined to provide the most cost effective solution there would have been a further need to issue an RFP for construction since there are many companies capable of providing this service.

Ms. Almas's Recommendations Draft

Not long after Ms. Leonard sent her draft procurement section, Ms. Almas sent draft recommendations to Mr. Houghton, the EMC, Mr. McNalty, and Deputy Mayor Lloyd, asking for comments. The recommendations read:

THAT Council receive staff report EMC 2012-01,

AND FURTHER THAT Council direct staff to proceed with the construction of a Sprung insulated architectural membrane facility for a year-round single pad ice arena at central park, maintaining 2 ball diamonds, the outdoor ice rink, lawn bowling facility, and additional green space – while maintaining the option to twin the arena at a future date;

AND FURTHER THAT Council direct staff to proceed with installing a Sprung insulated architectural membrane structure over the existing Centennial Pool, and removing the existing building to provide a year-round pool to meet the community's aquatic and competitive swimming needs.

Ms. Almas testified it was inappropriate for her to send the draft recommendations to Mr. Lloyd at this juncture, but she was otherwise content with the contents of the recommendations.

Mr. McNalty Revises Procurement Section and Recommendations

At 11:46 am, Mr. McNalty sent revisions to Ms. Leonard's draft procurement section to Mr. Houghton and the EMC. He made minor changes and added the following sentence to the beginning of the first paragraph:

The procurement process recommended for the supply and construction of the Outdoor Pool enclosure and the Single Ice Pad at Central Park is a direct purchase of the facilities from the supplier.

Mr. McNalty also inserted another sentence at the end of the last paragraph:

There is only one manufacturer of Architectural Membrane structures that has a proven track record of success and that distributes this technology.

Fifteen minutes later, Mr. McNalty sent Mr. Houghton, Deputy Mayor Lloyd, and the EMC his revisions to Ms. Almas's recommendations. He removed the word "Sprung" from the recommendations and made other minor changes. Mr. Houghton testified he did not realize at the time that Mr. McNalty had removed references to Sprung. He stated that the change was likely made because, at the meeting earlier that morning, they had discussed "that was kind of what ... the thing was called, insulated architectural membrane."

As 12:07 p.m., Ms. Almas replied to Mr. McNalty, Mr. Houghton, Deputy Mayor Lloyd, and the rest of the EMC expressing her approval of

Mr. McNalty's revisions to her recommendations. She also copied Mayor Sandra Cooper on the email.

Mr. Houghton's Contact with Paul Bonwick

In less than 24 hours, the staff report changed from contemplating a competitive tender to recommending a sole-source procurement. During that period, Mr. Houghton had three telephone conversations with Mr. Bonwick.

The first two calls took place at 4:30 p.m. and 5:30 p.m. on August 23, totalling about 35 minutes. They occurred shortly before Mr. Houghton and Mr. McNalty discussed Mr. McNalty's "new approach" to the staff report. Mr. Houghton testified he did not recall what he and Mr. Bonwick discussed, though the calls could have been about "a multitude of other things," including PowerStream and the mayor's golf tournament.

Mr. Houghton and Mr. Bonwick spoke again on the morning of August 24 for eight minutes at 8 a.m., right before Mr. Houghton's meeting with the EMC in which sole sourcing was discussed. Mr. Houghton did not recall the content of this call either. At 8:18 that same morning, Ms. Stec emailed both Sprung and BLT, stating that Mr. Houghton would be attending meetings to share information regarding Sprung. She assured them she had "armed him with the power point."

Mr. Bonwick testified that he never discussed sole sourcing with Mr. Houghton.

I do not accept Mr. Bonwick's evidence. As I find in Part Two, Chapter 6, Mr. Bonwick discussed the potential for the Town to sole source the Sprung facilities through BLT at the July 26 meeting between BLT and Green Leaf. As I describe in Part Two, Chapter 8, the Town's potential procurement of BLT's services was a regular topic of conversation between Mr. Bonwick and Mr. Houghton in August 2012.

On August 23 and 24, Mr. Bonwick would have been aware that staff was finalizing the staff report about the recreational facilities. He knew that these facilities were scheduled to be discussed at the Council meeting on August 27.

In the circumstances, it defies common sense to think that Mr. Bonwick would not inquire about the status of the Town's deliberations on

procurement and advocate for a sole-source procurement when he talked to Mr. Houghton. A sole-source procurement benefited Mr. Bonwick's client, BLT, and, by extension, himself. With a sole source, Mr. Bonwick would not face the risk of losing his success fee because another bidder outbid BLT.

Final Version of the Staff Report

On August 24 at 12:05 p.m., without waiting to receive Ms. Almas's thoughts on Mr. McNalty's revisions, Mr. Houghton circulated a new draft of the staff report to the EMC and Mr. McNalty, asking them to "Please take a look and adapt if needed." This version would end up being the final draft of the report.

Flawed Staff Report

The staff report was finalized at 12:05 on the afternoon of August 24, 2012. The product of Mr. Houghton's direction and oversight, the report considered an "architectural membrane building"* to cover the pool, and purported to compare two arena options – architectural membrane and pre-engineered steel – along with a discussion about renovations to the Eddie Bush Memorial Arena. The process described in Part Two, Chapter 10, produced a report that described and portrayed Sprung Instant Structures Ltd. as the obvious, most cost-effective choice for Council, and one that carried little risk or uncertainty. Misstatements, inaccuracies, and omissions in both the construction estimates presented and the discussion of the construction options led to this inaccurate representation. In this chapter, I describe some of the more serious flaws, starting with the construction factors discussed in the staff report and then followed by an analysis of the calculation of the cost estimates for the Sprung and pre-engineered steel arena.

Construction Factors

The staff report misrepresented the site-servicing estimates and costs required to achieve buildings that would qualify for LEED certification. It also misapplied contingencies, skewing the information provided in favour of Sprung.

* Earlier drafts of the staff report referred to this option first as a "Fabric Building," then an "Insulated Fabric Membrane."

Inconsistent Site-Servicing Estimates

The staff report stated that, for both the arena and the pool, the purchase would be limited to the fabric structures and the interior components, allowing the Town to complete site servicing independently and at a “significant cost savings.” The report also stated that the estimated site-servicing costs were \$500,000 for the arena and \$200,000 for the pool.

There are three problems with the manner in which the report presented the site-servicing costs.

First, \$500,000 and \$200,000 were not objective estimates of the anticipated site-servicing costs. The Town’s manager of fleet, facilities and purchasing, Dave McNalty, handled the cost calculations for the staff report and testified that the final site-servicing estimates, which he described as “aggressive targets,” were set “in conversation with the CAO and perhaps others.” By way of comparison, Mr. McNalty’s first estimate of the site servicing was \$1 million for the arena and \$400,000 for the pool, and WGD estimated site servicing for the arena to be \$1,164,281, regardless of building type.

I accept Mr. McNalty’s evidence that the \$500,000 and \$200,000 site work estimates were aggressive targets set with Mr. Houghton’s approval, not objective cost estimates. The aggressive nature of the estimates was not explained in the staff report. At the very least, the report should have advised that WGD had estimated the arena site-servicing cost as \$1,164,281 and that staff believed the work could be completed for as little as \$500,000.

Second, the staff report suggested that, when it came to the arena, the option of having the Town undertake site servicing (thereby reducing the costs) was available only if the Town chose the fabric arena:

The costs of Central Park development will be minimized for the construction of an initial arena with either approach, however, the Insulated Architectural Membrane arena procurement allows the Town to facilitate park development for site servicing, parking improvements and landscaping to proceed in a phased approach. An allowance of \$500,000 should be considered in this evaluation.

This statement was false and misleading. Further compounding the lack of clarity on the site-servicing costs, other parts of the report suggested

that the \$500,000 site-servicing estimate would apply to both fabric and pre-engineered steel.* This however, gave rise to the third problem: the report failed to explain that site-servicing costs had been included in the estimate for a pre-engineered steel arena, but no site-servicing costs had been included in the fabric building estimate. I discuss this matter in more detail below.

At the hearings, Mr. McNalty confirmed that, with pre-engineered steel, the Town could also have undertaken site servicing “for that same aggressive target.” WGD’s Richard Dabrus, whose sensible evidence in this regard I accept, testified that, as a general matter, site-servicing costs would be the same for pre-engineered steel and fabric buildings, noting “the cost of asphalt is the same” regardless of whether the project was a design-build or traditional construction.

The report as a result inflated the cost difference between the pre-engineered steel and Sprung arenas. First the report presented the cost estimates as comparable when they were not because only the pre-engineered steel estimate included site-servicing costs. Second the report added \$500,000 in site-servicing costs to both estimates when the pre-engineered steel estimate already incorporated \$1,164,281 for site servicing. I discuss below other ways the cost difference between the arena options was inflated in favour of Sprung and BLT Construction Services Inc.

Inconsistent Contingencies

The staff report also provided misleading information about the need for contingencies between the pre-engineered steel and fabric arenas. The report stated that a “significant advantage” of the fabric structures was that their cost would not be subject to additional engineering costs and contingencies (additional amounts added to the estimate to account for unknown or unexpected costs) because “the complete design and engineering works are included in the cost of the enclosure and improvements are fully quantified at the time of order.”

* For instance, the summary of arena costs stated that the \$500,000 site-servicing allowance was the “same for all options.”

In contrast, the estimate for the pre-engineered steel arena included two 10 percent contingencies: one for design and construction changes; and one for design fees, permits, and “miscellaneous” items that Mr. McNalty believed WGD had not included in its estimate. I discuss this estimate further below.

Mr. McNalty testified that he was directed to remove contingencies he had included in his early draft comparison spreadsheets for the Sprung arena and pool, explaining “there was no desire to have a contingency shown.” He could not recall who told him to remove the contingencies for the Sprung arena and pool from the estimates provided to Council. He testified that he thought contingencies should be included for the Sprung structures to provide “the whole picture of the ... potential investment” and to account “for the unforeseen.”

Mr. McNalty specifically noted that the costs for a fabric cover over Centennial Pool should have included a contingency to account for increased uncertainties that came with erecting a structure on a site that had already been used for a number of years. He also agreed that removing the contingency from the Sprung arena and not the pre-engineered steel estimate took “some of the objectivity out of the comparison.”

Marjory Leonard, who was the Town’s treasurer, did not recall any discussion about removing the contingency from the estimated costs. She said she believed the fabric structures did not require a contingency, but could not recall the source of this belief.

Ed Houghton, the Town’s acting chief administrative officer (CAO) at the time of the events, testified that he did not discuss contingencies with Mr. McNalty before Mr. McNalty removed them from his comparison spreadsheet late on August 23. He believed, though, contingencies were discussed with the Executive Management Committee and Mr. McNalty on the morning of August 24 (see Part Two, Chapter 10). Mr. Houghton said in his evidence that “there is no need for design contingency because the design contingency is included in the BLT budget,” continuing:

What we were trying to do again, I was – “we,” “I” – we were trying to be receptive to what we were hearing that they wanted something of ... like, that would be inexpensive, and we were trying to make sure that the

numbers that we had come in were going to be the numbers that were going to come in and not – not add a contingency, so people actually have a little bit of leeway to be able to add additional items to the – to the project.

Mr. Houghton testified that, while he was aware that change orders could increase the cost of the facilities, he did not expect any change orders in August 2012 because he did not expect the Town would change the scope of work after the contract was signed.

I do not accept this evidence. Mr. Houghton was the Town's executive director of engineering and public works and was experienced in construction. He would have known that change orders (and resulting increased project costs) are expected for any construction project. As reflected in his testimony quoted above, Mr. Houghton was well aware that Council wanted an inexpensive option and, for that reason, he removed the contingency from the option he wanted Council to select.

As I discuss in Part Two, Chapter 15, \$1,516,383 (including HST) in additional charges were incurred because of change orders after the contract was signed. It was misleading for the staff report to say fabric structures required no contingency. Moreover, for the arena, excluding a contingency unfairly inflated the price difference between the Sprung arena and a pre-engineered steel arena, as I discuss below.

Misstated LEED Status

The staff report also misstated the LEED status of the fabric structures and, in doing so, mischaracterized – in favour of Sprung – how they compared to pre-engineered steel.*

Each of the arenas proposed would qualify for a LEED Silver accreditation. In order to receive the accreditation there would be additional commissioning costs for either building system. A significant difference

* LEED (leadership in energy and environmental design), an independent rating system is discussed in Part Two, Chapter 6.

in the two construction types is that the Insulated Architectural Membrane structure has the LEED requirements built into its basic design, whereas the traditionally industrial Pre-Engineered Steel building must be modified to meet the requirements leading to additional engineering costs and custom components.

Mr. McNalty introduced the notion that the fabric arena had the LEED requirements built into its design, whereas a pre-engineered steel arena required modification, in his first draft of the staff report on August 19. Ms. Leonard added language indicating that commissioning costs would be required for either type of structure to obtain LEED certification. This language persisted through subsequent drafts and remained in the final report.

The staff report's suggestion that the Sprung structures would automatically qualify for LEED silver status was incorrect and misleading.

Tom Lloyd of Sprung, Dave Barrow of BLT, Ron Martin, the Town's deputy chief building official, Ed Houghton, and Green Leaf's president, Abby Stec, all testified that LEED certification considered many elements of the construction process and that, while using a Sprung structure could assist in achieving LEED certification, it did not guarantee it. Richard Dabrus of WGD also shared this belief:

[T]he membrane structure is just an enclosure. There ... are many other elements that go into LEED certification, everything from having bus stops close by to ... low flush toilets. And it's a complete package, complete arena. And again, the structure and closure are just components of the overall picture.

Mr. McNalty, in contrast, testified that he understood Sprung structures were automatically LEED certifiable upon construction. He explained that someone from Sprung had advised the Town at an early meeting that Sprung buildings had the LEED silver requirements built into their basic design, such that if the Town applied for LEED silver certification, the building would receive it.

I accept the evidence of Tom Lloyd, Dave Barrow, Ron Martin, Richard

Dabrus, and Abby Stec. Sprung structures were not automatically eligible for LEED certification upon construction. I also accept that Mr. McNalty misunderstood the LEED status of Sprung structures.

Mr. Houghton took a similar position in his closing submissions. He stated that Sprung structures were clearly not automatically LEED certifiable, and argued that “it cannot be said that the Staff report suggested that to construct the project with a Sprung structure would automatically achieve a [LEED] silver standing.” He noted the staff report’s statement that commissioning costs were required for the structures to receive accreditation and contended that this statement was proof that the report did not claim that Sprung structures were inherently certifiable.

I do not accept Mr. Houghton’s argument that the staff report accurately portrayed the LEED status of the fabric membrane buildings. The report asserted that a fabric membrane arena “would qualify” for LEED accreditation and had the requirements for such accreditation “built into its basic design.” This left the impression that no additional components would need to be added to the structures in order to make them LEED certifiable.

The report’s statement regarding commissioning costs was simply a reference to the costs involved in having the structure formally certified as a LEED building. The statement does not take away from the assertion that the Sprung structures would achieve certification if the Town decided to incur the commissioning costs.

I am satisfied that a plain reading of the staff report leaves the impression that the Sprung structures were inherently eligible for LEED certification upon construction. As discussed above, this was not the case.

The staff report’s inaccurate depiction of the LEED eligibility of fabric structures prevented Council from making an informed decision on the construction of recreational facilities in three ways.

First, in claiming that a fabric structure would be eligible for LEED certification upon construction, the report erroneously portrayed a Sprung arena as a more attractive option than a pre-engineered steel arena because the staff report suggested the pre-engineered steel arena would require additional modifications to achieve LEED certification. The truth was that both structures required substantial additional work to attempt to achieve eligibility for LEED silver certification.

Second, the staff report suggested that Council was receiving something that it was not. Mr. Barrow testified that the budget he prepared for the arena was not for a LEED silver–equivalent building. The staff report left the opposite impression, as illustrated by Councillor Kevin Lloyd’s email to a Collingwood citizen explaining that “[w]hat staff and council are proposing to move ahead on are state of the art, permanent facilities that are Silver Leeds certified and affordable.”

Finally, as I discuss in detail below, the estimated cost of the pre-engineered structure was increased to include optional items that may have assisted in achieving LEED certification for the arena. The BLT budgets were not similarly increased, and the result was another inaccurate cost comparison that favoured the Sprung arena.

Overinflation of Differences in Arena Costs

The staff report overestimated the cost of the pre-engineered steel arena by more than \$3.5 million. The price for the pre-engineered steel building was artificially inflated by adjustments that Mr. McNalty made at Mr. Houghton’s direction to WGD’s estimate. The discussion of the options in the staff report exacerbated the issue, incorrectly presenting the pre-engineered steel arena as requiring additional costs. I explain these adjustments and their presentation below.

Evolution of Cost Comparison Chart

Mr. McNalty testified that he prepared a spreadsheet to compare the costs of the construction options for the arena. Mr. McNalty used WGD’s estimate as a starting point for the pre-engineered steel arena. He also used BLT budgets for the fabric building arena and pool as a source of information for calculating his increases to the WGD estimate. He adjusted the WGD estimate throughout the last two weeks of August.

Mr. McNalty testified that, although the WGD report had already estimated the cost difference between a pre-engineered steel and fabric membrane arena (\$500,000), he believed adjustments to WGD’s estimate for the

pre-engineered steel arena were required to provide an “apples to apples” comparison and because WGD’s estimate assumed a traditional construction method, while the Sprung arena would be a design-build project.

The adjustments increased the estimated price difference between the fabric and pre-engineered steel arenas from \$500,000 (WGD’s estimate) to more than \$3 million. WGD was not provided the opportunity to review and comment on the adjustments made to its estimates or to comment on efforts to create an “apples to apples” comparison. Mr. McNalty testified that “there wasn’t time at that point ... in my perspective” to consult with WGD on those changes. These adjustments are detailed in the following sections.

Design-Build Construction Model

Mr. McNalty testified that, with a design-build arena, certain design and engineering costs would “inherently be less expensive than doing it in ... the traditional contract method.” WGD was not asked to consider whether its estimates would change if a design-build construction model was used. WGD’s Mr. Dabrus, whose evidence in this respect I accept, testified that he expected the overall costs would be the same regardless of construction model. He explained that the difference between construction models is who bears the risk of actual construction costs exceeding the estimates. In a design-build, the design-builder assumes that risk, whereas the client bears the risk in a traditional construction model. Mr. Dabrus continued that a design-build could cost less if the design-builder decided to take on more risk and reduce its costs as part of a competitive tender.

BLT’s budgets were not the product of a competitive tender. As I discuss in Chapter 13, Mr. Houghton did not make any efforts to negotiate with BLT.

Certification and Recommended Upgrades

Mr. McNalty increased WGD’s estimate by \$1.15 million to include the cost of all the “green initiatives” WGD had identified.*

* Where WGD had provided an estimated range for a “green initiative,” Mr. McNalty used the highest estimated cost. He could not recall why.

Mr. McNalty claimed he included these costs to provide an “apples to apples” comparison of the pre-engineered steel arena to the fabric arena. His efforts had the opposite effect – he added costs to the pre-engineered steel arena for components that were not included in the fabric arena budget. As I discussed above, Mr. McNalty mistakenly believed the Sprung arena was inherently eligible for LEED certification. It was not. Further, Mr. Barrow confirmed that most of WGD’s “green initiatives” were not included in the BLT budget. As a result, Mr. McNalty’s adjustments to WGD’s pre-engineered steel estimate artificially inflated that cost by \$1.15 million.

The discussion in the staff report further exacerbated the misrepresentation of the cost of the pre-engineered steel arena. The report inaccurately stated that the pre-engineered steel arena alone would require “additional engineering and custom components” to achieve LEED silver status, leaving the false impression that the pre-engineered steel arena would cost \$11.1–\$12.3 million plus additional unspecified costs for “engineering and custom components.”

Second-Floor Mezzanine and Elevator

WGD’s pre-engineered steel estimate did not include a second-floor mezzanine because WGD was not asked to consider that design element. BLT, in contrast, included a second-floor mezzanine in its budget because that design element was included on the list that staff provided through Green Leaf on August 3.

Mr. McNalty increased WGD’s pre-engineered steel arena estimate by \$995,037.02 to account for a second-floor mezzanine. Once again, Mr. McNalty explained that he made this adjustment in an effort to provide an “apples to apples” comparison to Council. Once again, the alterations made to WGD’s calculations likely exaggerated the price difference between the arena options in favour of Sprung.

Mr. McNalty testified that he arrived at the \$995,037.02 figure by extrapolating from the WGD estimate and the BLT budget. Though he did not have prior experience pricing a second-floor mezzanine for an arena or similar building, he felt he understood what was required. Mr. McNalty testified that there was not enough time to consult WGD on the adjustments

before the staff report had to be finalized. Mr. Dabrus, in his testimony, provided some comments on Mr. McNalty's work, suggesting at one point that the adjustment was "excessive." Ultimately, he stated that he was not in a position to estimate the cost of a second-floor mezzanine. No witness at the Inquiry testified that Mr. McNalty's estimate was objectively accurate.

Regardless of the accuracy of Mr. McNalty's second-floor mezzanine cost estimate, the staff report artificially inflated the cost of the pre-engineered steel arena by approximately \$1 million by stating that a second-floor mezzanine was included in the fabric building costs "whereas a similar addition to the Pre-Engineered Steel arena would add up to \$1,000,000 investment." The staff report did not advise that this cost was already accounted for in the pre-engineered steel arena estimate of \$12.3 million, leading the reader to believe that an additional \$1 million should be added to that estimate to account for the second-floor mezzanine. Mr. Houghton and Mr. McNalty agreed in their testimony that including this statement in the staff report was an error.

The staff report further exaggerated the difference in price between the fabric and pre-engineered steel arenas by failing to account for the required elevator to the second floor in the fabric arena, despite the fact that the report identified it as a basic design component. Although Mr. McNalty took this \$83,602.50 cost from BLT's budget and included it in his \$995,037.02 increase to WGD's pre-engineered steel estimate, the cost for the elevator was not included in the price presented for the fabric arena. The effect of this error was to further increase the price difference between the two options by \$83,602.50.

Site Servicing

WGD estimated that site servicing associated with constructing an arena would cost \$1,164,281. Mr. McNalty added that cost to his estimate for the pre-engineered steel arena, but made no such adjustment to the Sprung price presented in the staff report. Mr. McNalty testified that the BLT budget would have included some site-servicing components. Any site-servicing components in BLT's budgets, however, could not have been comparable to WGD's estimate for site servicing, as BLT was not asked to provide a budget

that included comprehensive site servicing at the pool and arena. As I discuss above, the staff report proposed that the Town take responsibility for site servicing at both sites.

As I explained above, site-servicing costs would be the same for a pre-engineered steel and a fabric arena. The staff report, however, erroneously included \$1,164,281 for site servicing in the cost of pre-engineered steel, while the Sprung budget did not include any material site-servicing costs.

The discussion in the staff report about site-servicing costs for the arena further exaggerated and misrepresented these costs for the pre-engineered steel arena. The report did not identify that the pre-engineered steel estimate included site-servicing costs. Instead, it stated that arena site servicing would cost \$500,000, effectively adding another half-million dollars to the \$1,164,281 in site-servicing costs already included in the pre-engineered steel estimate.

Design and Construction Contingencies

WGD's pre-engineered steel arena estimate included a 5 percent design contingency and a 5 percent construction contingency. In preparing his analysis, Mr. McNalty first removed both contingencies. By taking this step, he testified, he was left with the "hard costs" of construction. From here, Mr. McNalty added additional hard costs (the recommended upgrades, the second-floor mezzanine, and the site-servicing costs, all discussed above) and then recalculated the contingency based on the total increased hard costs.

In the early iterations of his cost comparison spreadsheet, Mr. McNalty included different contingencies for the Sprung pool building and the arena options. In his final adjustments, however, he increased the fees for design, permits, and miscellaneous contingencies for pre-engineered steel from WGD's 5 percent to 10 percent. Mr. McNalty did not recall why this increase was made or who made the decision behind it. Although Mr. McNalty's contingencies differed from those WGD used, Mr. Dabrus did not take issue with them, and he testified that WGD's contingencies may have been low. However, the Sprung contingencies were removed completely from the final staff report.

As I explained above, both pre-engineered steel and the Sprung arenas required contingencies. The fact that the Sprung arena estimate did not

include a contingency further inflated the price difference between the two building types. Moreover, the staff report did not explain that the \$12.3 million estimate for the pre-engineered steel arena included contingencies, leaving it unclear whether that estimate needed to be further increased for contingencies.

Cumulative Effect of Adjustments

I accept Mr. McNalty's evidence that the information in the final staff report was the result of directions he received and that he was not permitted to include certain information despite his desire to do so. Although Mr. McNalty could not remember who gave him all the directions, I am satisfied after considering all the evidence that the directions came from Mr. Houghton. The adjustments and the related discussion in the staff report artificially inflated the cost difference between the fabric and pre-engineered steel arenas by at least \$3.39 million through the unnecessary addition of the following costs:

- \$1.15 million for the "green initiatives";
- \$1 million for the statement that the pre-engineered steel estimate did not include a second-floor mezzanine, when it did;
- \$83,602.50 for the elevator that was included in the second-floor mezzanine costs for pre-engineered steel but not in the costs for the Sprung arena; and
- \$1,164,281 for site servicing, which the report did not state was already included in the pre-engineered estimate and, instead, suggested additional costs for site works would be incurred.

In addition to these amounts, the price difference was also inflated by the failure to account for contingencies in the Sprung estimates and the statement that the pre-engineered steel facility would incur additional costs to achieve LEED silver certification.

This gross overinflation of the price difference was particularly unfortunate because Mr. McNalty's comparison analysis, and its treatment in the staff report, was unnecessary. WGD had already analyzed the arena

construction options and concluded the price difference was about only \$500,000. I am satisfied that this was a reasonable estimate and the one that should have been presented to Council, along with an explanation that the inclusion of a second-floor mezzanine may affect the estimates.

To the extent staff wanted an “apples to apples” comparison of WGD’s pre-engineered steel estimate with the actual arena budget provided by BLT, this was a task best left to WGD. Mr. McNalty agreed such a comparison would have “been a benefit” to the Town, but there was not enough time:

[W]e had pushed WGD to get their numbers to us on the expectation that we would have the Sprung numbers at the same time, and then there was a delay in getting the Sprung numbers. So other than that timing issue, we could have gone back to WGD and asked them for further numbers.

WGD’s Report

As described above, WGD’s original estimate (\$7,632,124.29) for a pre-engineered steel arena was not included in the final staff report. The report provided only the adjusted pre-engineered steel arena estimate of \$11.1–\$12.3 million. Although WGD’s original estimates were not included in the staff report, the section of the report that discussed new arena options nonetheless included the following statement:

The estimated cost for the supply and construction of the basic Insulated Architectural Membrane arena is \$7,392,000 as compared to \$11,100,000 – \$12,300,000 (*estimates provided by WGD*) for the Pre Engineered Steel arena built using conventional construction methodology. [Emphasis added.]

Mr. Houghton added the statement “estimates provided by WGD” to the final report during his final edits on the afternoon of August 24. When Mr. Dabrus was shown the estimates for a pre-engineered steel arena that the staff report attributed to WGD, he stated: “I’m not quite sure where the numbers come from.” He further testified that nobody ever indicated to him

that Council would be told WGD's estimates for a pre-engineered steel arena were between \$11.1 and \$12.3million.

Mr. Houghton testified that he added the statement that the estimates were provided by WGD because,

I was – again, my impression at the time ... not having full understanding of what WGD was doing, but I thought that's ... where these numbers were coming from. Whether – again, David added the numbers that were, you know ... to get it to that LEED silver, but I ... put that in there.

Elsewhere in his testimony, Mr. Houghton stated that, at the time the staff report was finalized, he believed the report's \$11.1–\$12.3 million estimate for a pre-engineered steel arena was provided by WGD. He then told the Inquiry:

[I]t was my understanding that those numbers were from WGD. If ... staff had not – didn't have that understanding, I sent it to everybody and said please adapt as needed or required. It was my understanding that that's ... what it was. And ... I did that, forwarded it to the people who were also involved; nobody made the change.

Mr. Houghton reiterated in his closing submission that he believed the pre-engineered steel arena estimates in the report were, in fact, sourced from WGD.

I do not accept Mr. Houghton's evidence.

Mr. Houghton testified several times during the Inquiry that he was aware Mr. McNalty had made adjustments to WGD's estimates. Furthermore, Mr. Houghton confirmed during his evidence that he reviewed WGD's report when he received it on August 17. Mr. Houghton therefore would have seen WGD's estimate for a pre-engineered steel structure and would have known it was much lower than the estimate found in the staff report.

Given the above, I am satisfied Mr. Houghton added language to the staff report indicating that the report's estimates for a pre-engineered steel arena were created solely by WGD despite knowing the estimates had been adjusted by Mr. McNalty. The addition of this language further misled Council members, who would have mistakenly understood from reading

the report that the estimates were solely the work of an independent, third-party architectural consultant.

Members of Council should have been provided with WGD's report to better equip them to understand the structures being considered and the staff report's cost comparison.

Description of Staff's Research

As I discuss in the previous chapter, the procurement process recommended by the staff report was changed from a competitive procurement to a sole-source procurement under Ed Houghton's direction less than 12 hours before the report was finalized. The staff report left the false impression that extensive research and due diligence underpinned the recommendation that the best and most cost-effective option was for the Town to sole source the fabric structures. Specifically, the report stated:

Staff have exercised due diligence in the research of potential forms of construction and feel that there would be no additional advantage to be gained from a further tender process for the following reasons:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structures when producing estimates.

Cost effectiveness and benefits to the Town: through the investigative process, it has been determined that the Architectural Membrane structure would provide the most cost effective and all inclusive solution for the Town's needs.

Sole Source: through Staff research, it has been determined that there is only one supplier that can meet the specifications Staff developed for the facilities.

If one of the more traditional forms of construction had been determined to provide the most cost effective solution there would have been a further need to issue an RFP for construction since there

are many companies capable of providing this service. There is only one manufacturer of Architectural Membrane structures that has a proven track record of success and that distributes this technology.

Ms. Leonard testified that she consulted the Town's purchasing by-law when drafting this section of the staff report and that it reflected the discussions of the Executive Management Committee and Mr. McNalty on the morning of August 24.

There are several problems with this passage in the report.

First, the staff report did not accurately describe the research underpinning the recommendation that Council take the unusual step of sole sourcing this multimillion-dollar procurement. As detailed in Part Two, Chapter 10, staff mistakenly believed that comprehensive research had been conducted. Although WGD provided staff with information comparing pre-engineered steel arenas with fabric arenas, WGD's conclusions were not shared with Council. Moreover, WGD was not asked about key assumptions underlying the recommendation: advantages and disadvantages of a design-build process, the ability of Sprung structures to be LEED certified, and whether contingencies were appropriate for Sprung structures.

Second, the passage wrongly implied that sole sourcing was permissible because staff's "investigative process" had determined that the Sprung structures would "provide the most cost effective and all inclusive solution for the Town's needs," and that there would be "no additional advantage to be gained from a further tender process." Finding the "most cost effective and all inclusive solution" is the purpose of competitive procurement. Competitive procurement surveys the market in a fair, objective, and transparent manner to achieve the best result for the best price.

Third, in stating that Sprung was the "only supplier that can meet the specifications Staff developed for the facilities," the report misrepresented the Town's needs when it came to recreational facilities. Ms. Leonard confirmed that the "specifications staff developed for the facilities" were "[i]nsulated architectural membrane structure[s] ... and pretty much those alone." Ms. Leonard, whose testimony in this regard I accept, stated that Mr. Houghton was responsible for developing these specifications.

Mr. McNalty agreed in his testimony that "there was no reason why" staff

could not have chosen “specifications” that allowed for any design-build recreational facilities and then used an RFP process to determine whether to build fabric membrane or pre-engineered steel facilities. He acknowledged that, “from the point of view of having more fulsome information, [an RFP] would have been good to have.”

I am satisfied that a pre-engineered steel building could have met the Town’s need for an arena. It is also possible, as Mr. Dabrus of WGD indicated, that a pre-engineered steel arena might have been a cheaper alternative had there been a competitive RFP procurement process.

Fourth, this passage suggested staff had conducted research to conclude that no other supplier could provide an insulated architectural membrane. Elsewhere, the report also stated that, with regard to the pool, “We are only aware of one (1) supplier of the type of Insulated Fabric Membrane structure that would allow for satisfactory year round swimming pool use.”

As I discuss further in Part Two, Chapter 14, Tom Lloyd of Sprung testified that, at this time, his firm maintained a spreadsheet of competitors that also sold fabric structures. The spreadsheet identified several companies that offered insulated fabric membranes. The spreadsheet recognized that at least one competitor, Norseman Structures, offered structures with R-30 insulation and had also built recreational facilities.*

At the hearings, Tom Lloyd testified that a key difference between Sprung and its competitors was that Sprung manufactured its structures with insulation built in, whereas the competitors added insulation after the fact – sometimes by a third party. With respect to Norseman, Mr. Lloyd initially testified that he understood the company “wasn’t even selling in this part of the world,” but then acknowledged that Sprung’s spreadsheet stated that Norseman did distribute in Ontario. Whether there were viable alternatives to Sprung is a question that would have best been answered through a competitive procurement.

In this respect, Ms. Leonard’s initial draft of the report stated something different about competitors when it came to the pool, namely: “Council should be aware that there are a limited number of suppliers for this type

* As noted in Part Two, Chapter 7, a building’s insulation is measured by “R” value. A building with a higher R value is better insulated.

of constructed building.” In a later draft, Ms. Leonard edited the passage to read: “Council should be aware that there are a limited number of suppliers for this type of constructed building that would allow for year round use.” The final staff report did not make any reference to other suppliers.

Ms. Leonard testified that the purpose of the original wording of this passage was to inform Council that there would not be many bidders in a potential RFP for a fabric membrane pool cover. The revision changed the sentence from a caution to Council about the number of local fabric structure suppliers to an inaccurate statement that could be used to justify a sole-source procurement.

Finally, the above passage inaccurately stated that an “[e]lement of competition was included in the gathering of estimates,” which I discuss further in the next section of this chapter.

WGD as a Competitor

The staff report contained a “Discussion” section, which listed purported reasons why Council could procure recreational facilities directly from Sprung without undergoing a competitive procurement process. One of the stated reasons was:

Element of competition was included in the gathering of estimates: the manufacturers of the Architectural Membrane structure knew that they were in competition with the more traditional forms of construction; WGD Architects knew that they were in competition with the Architectural Membrane structure when producing estimates.

This section was directly reproduced from the “procurement section” email Ms. Leonard sent to Mr. McNalty, Mr. Houghton, and the Executive Management Committee at 10:46 a.m. on August 24. However, this statement was inaccurate. Neither Sprung, BLT, nor WGD believed it was taking part in a competitive estimate-gathering process.

Richard Dabrus of WGD testified that his company’s mandate in its work for Collingwood was to impartially advise the Town on how certain

construction types might fit its interests, not to compete with other suppliers for a construction contract.

BLT's Mr. Barrow testified that his firm understood it was competing for the Town's business against the multi-use facility described in the Steering Committee's report.^{*} He was not aware of BLT competing with any other construction types. Although Mr. Barrow may have believed BLT was competing against a multi-use facility, this is not the type of competition described in the staff report. Moreover, the Steering Committee's estimate was created in a non-competitive context, was known to the public before the Town was introduced to BLT, and was publicly criticized by Council.

I am satisfied that BLT did not believe it was in any form of meaningful competition. When asked to explain the extent of the competition between BLT and the multi-use facility described in the Steering Committee's report, Mr. Barrow stated:

I don't know if I knew an understanding [*sic*] of how [the competition] was unfolding other than we were needed to give a price so that it would be comparable to whatever the [multi-use facility] building price was.

Similarly, Mr. Houghton testified that he did not recall informing BLT that it was competing against any construction types aside from the Steering Committee's multi-use facility. Mr. Houghton testified, however, that he told Sprung representatives at either the July 27 or August 3 meeting that the Town was gathering estimates for other construction types (see Part Two, Chapter 8). I do not accept this evidence. No other witnesses recalled this topic being raised at the meetings. Tom Lloyd of Sprung said the matter was raised at the July 11 meeting with the mayor and deputy mayor. At that time, however, WGD had not yet been asked to create estimates.

In any event, even if Mr. Houghton had advised Tom Lloyd at some point that the Town was looking at pre-engineered steel as well, this knowledge would not have made BLT's estimates the product of a competitive environment for two reasons. First, Mr. Lloyd and Sprung did not create budgets. Mr. Barrow at BLT did, and he did not understand there to be meaningful

* The Steering Committee's report is discussed further in Part Two, Chapter 2.

competition. Second, Mr. Lloyd testified that, when he learned the Town was also examining a pre-engineered steel facility, he learned as well that the Town was not interested in pre-engineered steel, a message that undercut any sense of competition.

Informing a potential supplier that the Town is looking at options is not a substitute for competitive procurement.

Ms. Leonard testified that it was inaccurate to describe WGD as being in competition with Sprung. She stated that WGD was not participating in any sort of competition but was rather researching “pros and cons” of different building types. Overall, she felt that staff’s estimate-gathering process leading up to the completion of the staff report had been “market research, getting some numbers to put into a report that should have had Council make a final decision ... ‘competition’ is not the right word.”

Mr. McNalty and Sara Almas, the Town clerk, both agreed that it was incorrect to state that BLT and WGD were in competition, since they were in different lines of business: Sprung was a contractor, while WGD was consulting on various architectural structures.

When asked why she used the term “competition,” Ms. Leonard stated:

This is again one of those things that I was directed to do at the [EMC meeting on the morning of August 24]. I had to come up with something to put in there, and those were the points to touch on that Ed had touched on when he was talking to us ... in his rationale, and I also believe in the phone call that I had the night before.

Ms. Leonard noted that she did not raise concerns with the Executive Management Committee over the accuracy of the wording because she felt that doing so ultimately would not make a difference in the final version of the report.

Mr. Houghton also understood that it was not accurate to describe WGD, Sprung, and BLT as participating in a competitive estimate-gathering process. In an email to Mr. Dabrus after Council approved the construction of the Sprung structures, Mr. Houghton told Mr. Dabrus:

I believe the word competition meant that we were looking at different types of structures and your firm was aware that we were getting prices on other types of structures and your firm provided us the estimated numbers on the steel fabricated building. It did not mean however that you were in a competitive bidding process because we well know that you were providing budget numbers or estimates as our Central Park Project architect and not firm numbers as we may have gotten from a construction contractor.”

Mr. Houghton reiterated this point in his testimony and closing submissions, while attributing the error to a combination of Mr. McNalty and Ms. Leonard. He testified that the report’s description of WGD as being in competition with Sprung and BLT was “unfortunate text” before stating that the section of the report was drafted by Ms. Leonard and edited by Mr. McNalty. Mr. Houghton repeated in his closing submissions that the statement was inappropriate before saying that, “[r]egrettably, the inappropriateness of Ms. Leonard’s statement was not addressed by the remainder of the EMC or Staff members prior to the publication of the Final Staff Report.”

I agree with the assessment of Ms. Leonard, Ms. Almas, Mr. McNalty, and Mr. Houghton. Sprung and BLT were not in competition with WGD. Sprung and BLT were trying to sell the Town a product, while WGD was providing an assessment of the comparative costs and structural advantages and disadvantages of two styles of recreational facilities. These mandates are not the same and not indicative of a competition between the two companies.

I also accept Ms. Leonard’s evidence that Mr. Houghton directed her to use this inaccurate language.

In suggesting that there had been an element of competition in obtaining estimates, the staff report provided false comfort that, while there would be no competitive procurement, the Town was still receiving competitive prices. In reality, the Town solicited prices from a single supplier – BLT – through a process that was entirely devoid of competition or negotiation. As I explain in Part Two, Chapter 13, Mr. Houghton did not negotiate with BLT concerning its cost estimate.

Misrepresentation of Department Heads' Review

The final staff report stated:

This report was reviewed by the Executive Management Committee, Director of Parks, Recreation and Culture and the Manager of Fleet, Facilities and Purchasing August 21 and circulated to Department Heads for comment August 23. Comments received were reviewed and incorporated prior to having the report proceed to Council.

This statement was inaccurate. Both Mr. Houghton and Ms. Almas agreed that the report was not circulated to the Town's department heads on August 23 because the report was finalized only at noon on August 24.

The inclusion of this passage in the final report left Council with the false impression that the report's contents and recommendations – in particular the recommendation to sole source – had been reviewed by the Town's department heads and they had not objected to the report's recommendation.

Inaccurate Information About Funding

The staff report contained a section titled "Effect on Town Finances," which listed the total costs of the two Sprung facilities and described available options to fund them:

The Total Cost of the Two Buildings is \$10,617,000
Accessory Costs \$ 316,000
Site Servicing Costs for Both Buildings \$ 700,000
Total Cost (less taxes) \$11,633,000

The Town has the following funds available:

Reserve \$1,500,000
County – portion of Poplar Sideroad construction 2010 \$1,300,000
Collus PowerStream Partnership (to be confirmed by public) \$8,000,000

Potential [Development Charge] – Heritage Park – parking/landscaping
(22%) \$88,000
Potential [Development Charge] – Central Park – arena enclosure (18%)
\$821,488
Total Available (potentially) \$11,709,488.

The “Effect on Town Finances” section of the report was left blank in every draft until Ms. Leonard’s August 23 draft (see Part Two, Chapter 10). The initial draft of the section included the above list of available funds but did not yet include the total costs of the structures recommended by staff. The section also included information on the costs of debentures that could be used to fund the purchase of recreational facilities. The section remained the same until Mr. Houghton sent the final draft of the report to Mr. McNalty and the Executive Management Committee on the afternoon of August 24. The August 24 version added the total costs for the Sprung structures and removed the information regarding debentures.

This final version of the “Effect on Town Finances” section was inaccurate.

The total costs to construct new recreational facilities did not include the costs of renovating the Eddie Bush Memorial Arena, which had been assessed earlier in the report and was projected to cost between \$2.124 and \$3.124 million, depending on whether the Town could secure funding for the work. The failure to include this information provided the false impression that the projected cost of the work recommended by staff was lower than the amount of funds available to the Town to finance the work. Ms. Leonard testified that she did not know why information regarding the Eddie Bush Arena was not included in this section of the report.

Pool Information Removed or Omitted

The staff report’s assessment of a fabric membrane pool cover changed in several ways between Ms. Leonard’s initial draft and the final draft. Over the course of several revisions to the draft, statements regarding risks associated with covering the pool were either removed or omitted.

Pool Cover Description Changes

Over the course of the drafting process, information that cast a fabric membrane pool cover in a negative light was removed from the staff report.

Ms. Leonard's initial draft listed certain disadvantages related to a fabric membrane pool cover, including: "We could find no other pools of this construction in Ontario," and "We do not have experience operating a year round pool of this nature." The last draft of the staff report that Ms. Leonard authored also stated, regarding a fabric pool cover: "There may be some planning issues that will need to be resolved." All these statements were removed from the report during Mr. McNalty's revisions on the night of August 23.

In her August 21 draft, Ms. Leonard also added a description of the benefits and risks that the Town would assume if it became an early adopter of fabric membrane technology. That draft stated:

[T]here are many advantages to becoming an early adopter or trend-setter for new concepts and technologies. The relationship with customer and vendor is synergistic. The customer is exposed to the problems, risks and annoyances of "being first" and is usually rewarded with especially attentive vendor assistance or support, preferential pricing, and favourable terms and conditions. The vendor benefits from receiving revenues, the customers' endorsement and assistance in further developing the product or its marketing program.

That text was also removed from the staff report during Mr. McNalty's revisions on the night of August 23. Mr. McNalty added a new passage to the arena section that praised the benefits of the Town being seen as an adopter of new technology, but it did not mention any of the corresponding drawbacks:

The technology utilized in this building system is innovative and presents well for energy efficiency and the environment. The arena will not only satisfy the immediate ice needs of the community but will also further enhance the Town's image as a leader in the adoption of new technologies.

Ms. Leonard testified that it would have been important for Council to have received the information in the original passage because “we had no experience with that type of technology ... And usually, with any new building there’s always a few quirks that come along.” She stated that she was not involved in the discussions that resulted in the deletion of information from the report. Ms. Leonard also noted that, in hindsight, she should have raised concerns regarding the removal of the information, but she was “stunned” by the high volume of changes that had been made to the staff report.

The removal of this information gave Council an incomplete picture about proceeding with fabric structures. It suggested that the decision to use an unusual building material was without risks. It was not. An objective and impartial staff report produced by a transparent process would have contained Ms. Leonard’s cautions.

Pool Condition

The final staff report attached an appendix that included information about recent upgrades to the outdoor pool’s piping and chemical addition systems. It also stated that the pool was “currently scheduled for an upgrade of the recirculation and filtration system in the fall of 2012.” The report did not provide other important information about the condition of the outdoor pool.

Volunteers built the outdoor pool in 1967. Mr. McNalty testified that staff did not assess the feasibility of covering the outdoor pool with a Sprung-style building before the July 16, 2012, Council meeting. He noted that upgrading the pool was “an ongoing project,” referencing work on “the piping, the pump, the filtration and so on” that had been done a year or two earlier and explaining that “those changes were being made in order to bring the pool up to current health standards.” When asked if he expected more investigation before Council decided to cover the pool, Mr. McNalty responded that, though simply covering the pool “without changing the intent of the pool” may not have required “a whole lot more investigation,” the scope of the changes to the project introduced after the contract was signed “certainly warranted a more detailed investigation.” As Mr. McNalty explained: “At the end of the day, the only thing they really salvaged was the concrete tub.”

Other Information Removed from Drafts

Other information was removed from early drafts of the staff reports that should have been included in the final version. This was consistent with Deputy Mayor Lloyd's instruction that "we must be careful not to give too much information." The omissions I discuss below deprived Council of the opportunity to make an informed decision to invest several million dollars in two recreational facilities of atypical design.

Detailed Estimates

Earlier versions of the staff report contained detailed financial information to help explain the report's cost estimates. This information was removed by the time the staff report was finalized.

Mr. McNalty's first revisions to Ms. Leonard's draft included cost estimates for a fabric membrane pool cover, a fabric membrane arena, and a pre-engineered steel arena as well as detailed tables explaining the constituent elements of the estimates.*

Detailed information on the cost estimates was included in subsequent drafts of the report up to and including Ms. Leonard's draft completed on the afternoon of August 23.†

Mr. McNalty's revisions to the staff report on the night of August 23 removed much of the detailed information. All tables outlining the constituent parts of the estimates were eliminated. The total costs for the structures as well as site-servicing costs were retained but embedded within longer paragraphs describing the traits of the structures. Information on permit costs, contingencies, and Mr. McNalty's recommended upgrades to the pre-engineered steel arena were removed entirely. Mr. Houghton's revisions to the staff report on the morning of August 24 added new stand-alone

* The information in these tables included site-servicing costs, contingencies, and Mr. McNalty's recommended upgrades to bring the pre-engineered steel arena in line with LEED silver standards.

† Over the course of this period, Mr. McNalty's estimate for a pre-engineered steel arena mezzanine was also added to the staff report.

sections describing the costs of the fabric membrane pool and arena and the corresponding site-servicing costs. The costs for a pre-engineered steel arena and associated site costs remained embedded within longer paragraphs. The final version of the report maintained this format and continued to omit the detailed financial information that had been included in earlier drafts.

Mr. McNalty testified that the decision to remove the detailed financial information took place over the course of correspondence on the evening of August 23. He could not recall who made the decision to remove the detailed estimates from the report but stated that the decision was not his. He further stated that, if given the choice, he would have kept the detailed figures in the staff report “[b]ecause they help to fulfill the whole picture of the ... potential investment.”

There was no reason to remove the detailed financial information from the report. I agree with Mr. McNalty that it provided Council with a fuller picture of the significant investment being proposed. Among other things, the detailed information would have revealed the assumptions underlying the cost estimates, which could have led to further discussion or questions, including about Mr. McNalty’s adjustment to the cost of the pre-engineered steel arena or the removal of contingencies.

Estimates of Operating Costs

The final staff report omitted important information about the operating costs for the proposed arena and pool. Marta Proctor, who at the time of the events was director of parks, recreation and culture, testified that, from the outset, she believed the staff report should include information about operating costs, as “any capital project that we would undertake should have appropriate drawings, costing and an operating business plan associated with it.” Similarly, Ms. Leonard testified that she assumed operating cost information would be available.

The early drafts of the report included placeholders for information on operating costs. Ms. Leonard’s August 23 draft included the following information about the estimated pool operating costs:

Council is aware that operating a year round pool facility will increase operational costs. Estimates have been derived based on the average five year historical net departmental results from the Centennial Pool operation. During the period 2007 to 2011, the total net departmental cost to ... run the pool was \$337,600 or, on average, \$67,520 per three month season. Extrapolating this average to a twelve month period would result in additional annual operating costs of approximately \$270,000.

That draft also explained the anticipated increase in operating costs for the proposed new arena:

Operating costs estimates received from PRC [Parks, Recreation and Culture Department] look at the current situation with the EBMA [Eddie Bush Memorial Arena], outdoor rink and Curling Club. The Curling Club has been included in the analysis because of the interconnectedness of the ice plant with the outdoor rink and staffing levels available for all of the facilities. Currently, the 2012 net departmental budgets for the three facilities shows [*sic*] a requirement for \$315,493 from tax revenues to sustain operations. The estimated increase in operational costs for operating four facilities is \$92,300 or a total of \$407,775 required from taxes to sustain the operations.

This information was removed from Mr. McNalty's August 23 draft.

Mr. McNalty stated at the hearings that he was directed to remove operating costs from his August 23 draft. He said he did not recall who gave the direction or why it was made.

The final report did not address operating costs at all.

Mr. Houghton testified that he did not think it was important for members of Council to have the operating cost information to inform their consideration of the recreational facilities over the weekend in advance of the Council meeting. When asked about the decision to remove the operating costs information from the staff report, Mr. Houghton responded:

I think we had a conversation about the operating costs, and I think that we had kind of, amongst the group, decided that the operating costs will be the operating costs, and Council had pretty much said that there is an urgent need for ice and water, and whatever the operating costs, they were willing to – to pay.

I think ... in the presentation though, Marjory gave an explanation of the operating costs. So we felt that in the report, it probably wasn't the location to do it. It would be better in the presentation.

As I discuss in more detail in Part Two, Chapter 12, the operating cost estimates included in the slide presentation were ballpark figures.

Conclusion

The staff report was deeply flawed. It did not permit Council to make an informed decision about a multimillion-dollar procurement for two recreational facilities, an issue of intense public interest. Rather than fairly present the options before Council, the staff report recommended a sole-source procurement based on misrepresentations, misstatements, mischaracterizations, omissions, and other inaccuracies. Several factors contributed to this result.

First, the short turnaround time for the report gave staff insufficient time to investigate both the pool and the arena. As I have discussed, staff were not comfortable raising their concerns about the deadline, nor did they believe that speaking up would make a difference. The August 27, 2012, deadline, among other things, prevented staff from properly researching Sprung and competitive structures further, or having WGD complete energy modelling and a further cost comparison based on the same information provided to BLT. The short timeline also created an environment where several critical decisions were made at the eleventh hour, including the decision to sole source. The decisions, as a result, were rushed, unconsidered, and vulnerable to improper influence or motives.

Second, Deputy Mayor Lloyd had inappropriate influence on the report's drafting. The deputy mayor was an advocate for Sprung before the July 16 Council meeting. He continued to advocate for Sprung when he

reviewed drafts of the staff report and discussed recreational facilities with Mr. Houghton. It is not surprising that the final report presented Sprung as an obvious choice, so much so that a competitive procurement was unnecessary. The deputy mayor's influence is palpable throughout. The staff report is an illustration of why individual members of a town's council should not be involved in staff's work.

Finally, while staff were not blind to the above concerns, they did not believe they could intervene.

Mr. McNalty testified that he did not believe it was his place to question the directions of the CAO or the Executive Management Committee.

Ms. Almas and Ms. Leonard testified that they did not raise concerns or object because they believed doing so would be simultaneously futile and place their employment at risk.

These circumstances created an environment where staff did not want to question Mr. Houghton's approach, and Mr. Houghton took their silence as consent.

The Town's interest in receiving non-partisan, objective, independent advice before a multimillion-dollar procurement was utterly ignored by this dynamic.

The Lead-up to the August 27, 2012, Council Meeting and Vote

As the August 27, 2012, Council meeting approached, Paul Bonwick, acting Chief Administrative Officer Ed Houghton, and Deputy Mayor Rick Lloyd discussed how to promote sole sourcing and Sprung Instant Structures Ltd. to Council. Mr. Bonwick lobbied members of Council, including his sister, Mayor Sandra Cooper, without revealing he had been retained by BLT Construction Services Inc., Sprung's usual building construction partner in Ontario, or that his company Green Leaf Distribution Inc. would earn a success fee if Council voted for Sprung.

Meanwhile, a community group formed to oppose Council's departure from the recommendations of the Central Park Steering Committee. A representative from the group spoke at the August 27 Council meeting, questioning several aspects of the recommendations set out in the staff report. After that presentation, Tom Lloyd, a regional sales manager at Sprung, spoke about his company's structures in glowing terms. Finally, Mr. Houghton and Town Treasurer Marjory Leonard presented the staff report and the recommendation that Council sole source Sprung arena and pool facilities.

At the end of the meeting, Council voted to follow the staff report recommendation. In doing so, many Council members expressed their trust that staff had done due diligence in making that recommendation.

Friends of Central Park

While staff prepared the staff report, a community group that identified itself as "Friends of Central Park" formed to oppose Council's departure from the recommendation made earlier that year by the Central Park

Steering Committee to explore a multi-use facility (see Part Two, Chapter 2). On August 10, Paul Cadieux, a Collingwood resident, sent an email to an undisclosed list of recipients, including Marta Proctor, the Town's director of parks, recreation and culture, with the subject line "Friends of Central Park Collingwood – Do It Once and Do It Right!" The email stated that the message had been sent to those who provided input on the Collingwood Central Park Project and to those identified as key stakeholders in the community. It identified the Friends of Central Park as a group of residents who wanted Council to build a community recreation centre in one location and to wait until funding was in place to do so.

Mr. Bonwick's Promotion of Sprung

Mr. Bonwick testified that, in the lead-up to the August 27 Council meeting, he promoted the Sprung structures in conversations with Council members and other community leaders, as had been agreed at the July 26 meeting between BLT and Green Leaf (see Part Two, Chapters 6 and 8). He stated that the conversations had two components. First, he would "highlight the competence" of Sprung structures to meet the community's needs and to "get people nodding their head saying, hey, this ... seems like a great solution." Second, he explained that, if the individual appeared receptive, he would talk about expediting the process and "how ... you move this thing forward in a manner that actually allows [Council] to deliver." More succinctly, he said: "I think, in short, if I was to capture it in a sentence, it was, in part, my responsibility to create the environment where [Council] would go in the direction they did." In other words, the decision to sole source the Sprung arena and pool.

In further testimony, Mr. Bonwick stated he likely would not have raised sole sourcing directly in his conversations; rather, he had "general conversations with various individuals in different environments related to how ... Collingwood Council might embrace a solution that would allow a timely delivery of something that they had been engaged in for some time." He continued that there were opportunities on social occasions to have discussions "with various members of Council." Some of the conversations occurred the

week before August 27, when Council was in Ottawa for the annual conference of the Association of Municipalities of Ontario.

When he spoke to councillors, Mr. Bonwick testified that he made the deliberate choice not to disclose that he was working for BLT, the company that would likely build the Sprung structures. He explained that, for every project he took on at the municipal level, he had to decide whether to have a “public role” or work “more behind the scenes”:

My company, or my companies, are engaged for the purpose of trying to advance a particular initiative that somebody in the private sector wants. Sometimes that involves a municipal government. You want to look at what is the best role you can play to serve your client's needs.

In this particular instance, it was my decision that the best role was for me to work, not in a public and profile manner, but rather work strategically to support and message what I thought was important for them.

Mr. Bonwick was lobbying when he promoted Sprung to members of Council. There is nothing inherently improper about lobbying. It can be beneficial to municipal governments. However, it must be transparent. The members of Council who Mr. Bonwick lobbied did not have the benefit of understanding what he – the mayor's brother and close advisor – stood to gain if the Town voted to proceed with Sprung. They were entitled to know that Mr. Bonwick was acting as a lobbyist so they could take this fact into account when evaluating what he said. Dealing with a municipality involves dealing with the public, and that requires transparency, among other things.

In his closing submissions, Mr. Bonwick acknowledged he should have been more transparent: “[D]uring that time there was no effort or instruction provided on my part to conceal this disclosure. That said, I should have handled it in a much more robust manner similar to my involvement with the Collus share transaction.” However, as I describe in Part One, Inside the Collus Share Sale, I do not agree with Mr. Bonwick's characterization of the disclosure he made in respect to the Collus Power share sale transaction (see Part One, Chapter 4).

Mr. Bonwick's Discussions with Mayor Cooper

On August 23, 2012, Mr. Bonwick emailed Mayor Cooper, Deputy Mayor Lloyd, and Mr. Houghton a copy of a *Toronto Life* article from June 2011 about a hockey arena in Etobicoke. The article, headlined “Apparently the Mastercard Centre for Hockey Excellence is a financial sinkhole,” reported that the municipality had provided \$35.5 million in capital guarantees for a private four-pad ice hockey arena and that the investors could not make the related loan payments. In his covering email, Mr. Bonwick wrote: “[T]his may be a useful article to read for members of Council and Staff. It would be very useful to have [Ms. Leonard] send it out as an example of how an expensive private partnership can go wrong!” Mr. Bonwick also commented, “Classic example of what happens when you over build.”

Although there is no evidence that Ms. Cooper followed Mr. Bonwick’s direction to circulate the article, she did mention it during the August 27 Council meeting:

We look at Etobicoke; they have the former Lions Arena or the Mastercard Centre, a \$43 million facility. They can't meet their loan payments according to Toronto Life magazine just recently came out. I don't want to put us as taxpayers in that type of a situation.

At the hearings, both Mr. Bonwick and Ms. Cooper testified that Mr. Bonwick did not inform Ms. Cooper that he was working for BLT. Ms. Cooper stated that, except for the Etobicoke arena article, she did not discuss recreational facilities with Mr. Bonwick before the August 27 meeting. She said her brother’s email was unsolicited, and she did not discuss the matter further with Mr. Bonwick. In contrast, Mr. Bonwick testified he did discuss Sprung with his sister before August 27.

I am satisfied Mr. Bonwick did not expressly disclose to Ms. Cooper that he was working with BLT. This omission was consistent with his approach to other members of Council. I am also satisfied that Mr. Bonwick did speak with Ms. Cooper about the recreational facilities and, in doing so, advocated that she support proceeding with two Sprung structures.

As I discuss throughout this Report, Mr. Bonwick was one of his sister's closest advisors, a fact that was "common knowledge," according to Rick Lloyd. Mr. Bonwick would not forgo any opportunity to promote Sprung to a key decision maker in the Town, especially his sister, the mayor. Mr. Bonwick's email about the Etobicoke arena shows that he had no hesitation in arming his sister with information he believed would assist his client. The fact that Ms. Cooper raised the Etobicoke arena at the meeting shows that Mr. Bonwick was effective in his efforts.

In addition, the day after the August 27 Council meeting, Ms. Cooper sent Mr. Bonwick a draft press release about the new recreation facilities. She testified she sent the draft to him because the Town did not have a communications officer, and communications was her brother's "forte." I am satisfied that Ms. Cooper shared the press release with Mr. Bonwick because he had already been advising her about the recreational facilities and she relied on his assistance and input.

Mr. Bonwick testified it was his general practice not to disclose his business dealings with the Town to his sister. He explained he had taken this approach with a "number [of] initiatives in Simcoe County" and that PowerStream was, in fact, the exception. He also testified he did not disclose his Town-related dealings to his sister because he did not want to create a situation where Ms. Cooper "feels she somehow got [*sic*] to take into consideration my involvement when she's dealing with the matter." He explained that, once he learned through the PowerStream experience that a sibling relationship did not amount to a conflict under the *Municipal Conflict of Interest Act*, he decided it would be better not to disclose his involvement with BLT to Mayor Cooper. He claimed he made this decision so his sister would have "the ability thereby to independently, without consideration in any manner of speaking for my involvement – to make decisions she feels are best."

I do not agree with Mr. Bonwick's reasoning. It overlooks the critical fact that the apparent conflict persisted regardless of whether he disclosed his BLT retainer to his sister. Not disclosing his role deprived Mayor Cooper of the opportunity to assess for herself how it affected her ability to participate in a vote involving Sprung facilities or BLT.

At the same time, Ms. Cooper did not have the option to turn a blind eye to her brother's activities. If she knew that her brother and close advisor

was involved in Town business, she had a responsibility to understand, at the very least, what matters he was involved with, such that she could assess whether his involvement might give rise to a conflict for her. Although I accept that Mr. Bonwick did not disclose his work with BLT to the mayor, Ms. Cooper enabled this non-disclosure by agreeing not to ask questions about Mr. Bonwick's work on Town-related projects.

I am satisfied that Mr. Bonwick opted not to disclose his relationship with BLT to his sister or to others on Council because he believed he would be more effective if Council did not know he was lobbying them. I do not accept that Mr. Bonwick was seeking to protect his sister from undue influence. On the contrary, he did influence his sister in his pursuit of Green Leaf's success fee.

Strategizing in Advance of the Council Meeting

In the days before the August 27, 2012, Council meeting, acting Chief Administrative Officer (CAO) Ed Houghton and Deputy Mayor Rick Lloyd also took steps to encourage Council to vote in favour of purchasing Sprung structures. They consulted with their friend Paul Bonwick in their efforts.

"Our Plans for Monday Night"

On the evening of August 22, Mr. Bonwick, Mr. Houghton, and Mr. Lloyd spoke on two 20-minute conference calls. At 9:29 p.m., after the calls had ended, Mr. Lloyd emailed Mr. Bonwick:

I must say that I was rather surprised to hear from your Cousin Wasaga Mayor Cal Patterson that he had a meeting last week with Sprung. Cal told us this when he overheard you speaking about our plans for Monday night and the proposed Sprung building. I must say that I was disappointed that you had not informed me about this presentation because if Cal wasn't supportive he could have caused us a great deal of embarrassment especially when he grew up in Collingwood and as County Warden.

Mr. Lloyd and Mr. Bonwick gave different accounts about the origins of this email.

According to Mr. Lloyd, he spoke with Cal Patterson, the mayor of nearby Wasaga Beach, at a County Council meeting on August 22, before he emailed Mr. Bonwick. As reflected in the emails, Mr. Patterson was the cousin of Mr. Bonwick and Mayor Cooper. Mr. Lloyd testified that Mr. Patterson told him that Mr. Bonwick had made a presentation to Wasaga Beach council about Sprung structures. In his testimony, Mr. Lloyd said that this news upset him because there was already public opposition to the Sprung structures in Collingwood and, he continued, “I didn’t need all of a sudden more people coming in from left field against what we’re trying to do.” He recounted how, when he questioned Mr. Bonwick about the Wasaga presentation, Mr. Bonwick replied, “No big deal,” and “sluffed it off as ... nothing. And I wasn’t very pleased about it.” Mr. Lloyd could not recall when the conversation occurred, but said it was sometime after he sent the email.

Mr. Bonwick, in contrast, testified that Mr. Lloyd emailed him about Wasaga Beach after the two men discussed the matter on the conference call with Mr. Houghton. He said that, during the call, Mr. Lloyd was “very animated” about his conversation with Mr. Patterson and was concerned that presentations in Wasaga could delay what was happening in Collingwood. In response, Mr. Bonwick testified: “I said, listen ... [Y]ou’re kind of all over the map. Put it in an email, and ... I’ll deal with it.”

Mr. Bonwick continued that, after he received Mr. Lloyd’s email, he realized that Mr. Lloyd was confused because he had never made a presentation to Wasaga Beach. Rather, Mr. Bonwick learned later, it was Pat Mills, a Sprung manufacturer’s representative, who had spoken to the municipality. Nevertheless, Mr. Bonwick testified that he might have discussed Sprung with Mr. Patterson at his house at some point after Mr. Mills made his presentation.

Mr. Houghton also testified that Wasaga Beach was the focus of the 40-minute conference call on August 22, the same day that BLT delivered its budgets to Mr. Houghton. He added that he was “a hundred percent sure” that the three men did not discuss the pool and arena budgets that BLT had delivered that day. Mr. Bonwick also stated that he and Mr. Houghton did not discuss the budgets. Mr. Houghton explained he was “disjointed from

the conversation because it really didn't mean much to me." All he recalled was that "Rick [Lloyd] was amped up about for whatever reason. And I just didn't understand it, so I didn't get involved." Instead, Mr. Houghton testified, he continued to work on his computer while Mr. Bonwick and Mr. Lloyd spoke. He added that, at the end of the conversation, Mr. Bonwick directed Mr. Lloyd to "put it in writing and I'll deal with it."

When asked about the conference call, Mr. Lloyd testified he did not recall speaking with Mr. Bonwick and Mr. Houghton that evening.

I make the following findings on this evidence. First, I do not accept that the conference call focused solely on Mr. Lloyd's conversation with the mayor of Wasaga Beach. I find that this topic may have been part of the discussion. I am satisfied, however, that the focus of the teleconference was BLT's budgets, which had been delivered that day, and the August 27 Council meeting, which was five days away.

As I note elsewhere, Mr. Bonwick's company was set to earn a substantial success fee if Collingwood purchased two Sprung structures from BLT (see Part Two, Chapter 9). There is no reason he would not solicit the views of the deputy mayor and the acting CAO on the budgets his clients had just submitted. They included a 6.5 percent success fee that would ultimately result in a payment of \$756,740.42 (including HST). There is also no reason he would not take the opportunity to discuss the strategy for the upcoming Council meeting, or, as Mr. Lloyd described it in his email, "our plans for Monday night."

Second, I do not accept that Mr. Houghton was a passive participant in the conversation. Throughout his testimony, Mr. Houghton emphasized that he was very busy during this period, working "seven days a week, twenty hours a day." If that was the case, he would not have had time for a 40-minute teleconference on a topic that did not hold his interest. Rather, I am satisfied that Mr. Houghton was content to discuss BLT's budgets and the upcoming Council meeting with his two friends.

In this respect, I am satisfied that Mr. Lloyd was concerned that concurrent Sprung promotional efforts in Wasaga Beach could bring unwanted attention to consideration by the staff and Town Council of new Sprung structures for Collingwood. I also accept that Mr. Bonwick asked Mr. Lloyd to send his concern in writing so he could raise it with Sprung and BLT.

Mr. Bonwick, as would be expected, acted promptly whenever someone from the Town was concerned about or needed something from his clients.

In this case, 17 minutes after Mr. Lloyd emailed him about Wasaga Beach, Mr. Bonwick forwarded the email to Dave Barrow and Mark Watts, the executive vice-president and president, respectively, at BLT; Tom Lloyd and Dave MacNeil, the regional sales manager and sales manager, respectively, at Sprung; and Abby Stec, whom he had recently appointed as president of Green Leaf:

Can someone help me respond to this e-mail I received from the Deputy Mayor of Collingwood?

I would suggest, if it's true, that there are discussions taking place with Wasaga Beach officials at this critical juncture in time we all look uncoordinated at best and incompetent at worst. The Mayor of Wasaga Beach (also County Warden) is a cousin of the Mayor of Collingwood and best friends with Councillor Edwards. Imagine if Mayor Patterson wasn't impressed or felt Collingwood should put the brakes on and look at combing [*sic*] their efforts with Wasaga! Anyone [*sic*] of these or other scenarios could have a detrimental effect at this stage of the process.*

Mr. Barrow responded to Mr. Bonwick's email and advised that Green Leaf, BLT, and Sprung had already discussed Sprung's presentation to Wasaga and agreed that Sprung would "[s]top talks with any regions until the deal is sealed." He added: "Tom you need to get your boys and let them all know no conversations or deals until we sign this deal." The next day, Mr. Bonwick replied and confirmed he had "excused himself" before the matter had been discussed at a meeting and that "Abby informed me that everyone was caught off guard and that it appears to be just a regular sales call."

As a final matter, I am satisfied that Mr. Lloyd asked Mr. Bonwick to address Sprung's activities in Wasaga Beach because he knew that Mr. Bonwick was assisting BLT with its efforts in Collingwood. I do not accept Mr. Lloyd's evidence that he did not know that Mr. Bonwick was assisting

* The email chain included Rick Lloyd, Paul Bonwick, Tom Lloyd, Mark Watts, David MacNeil, Dave Barrow, and Abby Stec.

Sprung and BLT on Collingwood matters. His evidence on this matter does not make sense. In cross-examination, Mr. Lloyd confirmed that, as a result of his conversation with Mr. Patterson, he learned that Mr. Bonwick was assisting Sprung with its efforts in Wasaga Beach. He continued, though, that he never asked Mr. Bonwick whether he was also helping the efforts in Collingwood, which were set to go before Council the next week. “Why would I?” he testified. When asked why he would email Mr. Bonwick about “our plans for Monday night” if he did not know that Mr. Bonwick was also involved with Sprung and Collingwood, he responded, “I have no idea.”

In his evidence, Mr. Bonwick admitted he was confused by his friend’s testimony. He testified that, while he could not recall formally declaring to Mr. Lloyd that he was working with BLT, he assumed Mr. Lloyd knew about it. He said there would be no other reason for Mr. Lloyd to ask him to assist with the Wasaga Beach matter.

I agree with Mr. Bonwick. Mr. Lloyd understood that Mr. Bonwick was dealing with Sprung, and he knew that Mr. Bonwick would direct them to stop speaking with Wasaga Beach until the Collingwood deal was done. As things turned out, that is exactly what Mr. Bonwick did immediately following the phone call.

Planning How Best to Present Sprung to Council

Beyond the August 22 teleconference, I am satisfied that Mr. Houghton, Mr. Bonwick, and Deputy Mayor Rick Lloyd continued to discuss how best to present Sprung to Council in the days leading up to the Council meeting on August 27.

On August 26, the three men had another teleconference, which lasted approximately 30 minutes. Mr. Houghton testified that the call was about his quitting as acting CAO so he could focus on Collus PowerStream. He said that, at this point, he was “exhausted” from being “pushed and pulled in a whole bunch of different directions” and at his “wits end.” He “needed someone to listen,” so he decided to speak with Mr. Lloyd, because he believed his earlier attempts to raise concerns at the Town about his heavy workload had been ignored, and also with Mr. Bonwick, because he was an advisor to Mayor Cooper.

After the call, Mr. Lloyd sent Mr. Houghton the following email:

Hey keep up the good work! ! ! I believe that Tomorrow we will have the results we hope for! Its [sic] all coming together because of you and your leadership! This has been the best few months of council that I have ever been involved with and its [sic] all because of you and your team approach!

The deputy mayor also forwarded this email to Mr. Bonwick along with the message, “Keep his spirits up!”

Mr. Lloyd testified he sent these emails because he believed Mr. Houghton was “depressed and ... down”: pressures from groups opposed to the construction of the Sprung facilities had got to him. He asked Mr. Bonwick to assist because, he said, “We’re all friends, we all know one another and I wasn’t just going to ask the Joe public out in the street to do it, I figured that Paul could do it.”

Mr. Houghton’s and Mr. Lloyd’s evidence illustrates how close the three men were at this point. Although I accept that, on this call, Mr. Houghton may have complained about the stress of handling his many positions, I note that, according to Mr. Lloyd, Mr. Houghton’s stress related to the Sprung structures. In response, Mr. Lloyd sought to boost Mr. Houghton’s spirits and enlisted Mr. Bonwick to assist.

In any event, I do not accept that this 30-minute teleconference focused solely on Mr. Houghton’s apparent career stress. I am satisfied that the men discussed the August 27 Council meeting, for the reasons I discuss above.

Distribution of Sprung Materials

On the morning of August 24, Ms. Stec asked Tom Lloyd and Dave Barrow to send her copies of “the Sprung / BLT power point” in a format that was easy to print. Later that day, Mr. Houghton asked Town Clerk Sara Almas to hand deliver “Sprung packages” to all members of Council except Deputy Mayor Lloyd. Ms. Almas testified that the packages contained Sprung promotional materials.

The materials were not included in the agenda for the August 27 Council meeting. Ms. Almas testified she did not know why the materials were provided to Council separately and not included in the agenda. She noted that it was rare for Council to be provided with promotional materials from potential suppliers but stated that they were distributed in this case because staff was recommending a sole-source procurement.

Mr. Houghton's decision to provide Council with additional Sprung marketing material exacerbated the asymmetry of information Council received about Sprung structures. In the staff report, Council did not receive any meaningful information about WGD's third-party assessment of the differences between fabric buildings and pre-engineered steel. Now Council was receiving marketing information that had been created to sell Sprung structures, not to provide an objective assessment of their features.

Securing Mayor Cooper's Support

On August 26, Councillor Kevin Lloyd emailed Council and Mr. Houghton to explain why he opposed a multi-use recreation facility. Mayor Cooper responded, "Thank you for your explanation of logic. I look forward to our council meeting tomorrow since our conference participation."

Mr. Houghton forwarded Mayor Cooper's email to Deputy Mayor Rick Lloyd, stating, "Not sure what she means but I think we need to speak to Sandra today to ensure she is on board. In spite of what Paul says. Let me know when you are back."

In his testimony, Mr. Houghton stated that he and Deputy Mayor Lloyd never spoke with Ms. Cooper, as contemplated in the email. He also said he could not recall whether the words "in spite of what Paul says" was a reference to conversations that Mr. Bonwick had with Ms. Cooper in which she expressed support for the Sprung facilities or a reference to conversations he himself had with Mr. Bonwick in which his friend commented on the "general excitement" within the Town for Sprung structures.

When asked about this email, Mr. Lloyd testified he had discussions with Mr. Bonwick around this time about the mayor's thoughts on how to proceed with recreational facilities, though he could not recall the details.

I am satisfied the email meant what it said: Mr. Bonwick advised

Mr. Houghton and Deputy Mayor Lloyd that he had spoken to his sister and she supported proceeding with Sprung.

Deputy Mayor Lloyd Advocates for Sprung

On August 25 and 26, Deputy Mayor Lloyd exchanged emails with Councilor Dale West, a Council representative on the Parks and Recreation Advisory Committee (see Part Two, Chapter 1) who had attended the Town's meeting with Ameresco Canada Inc. and Greenland International Consulting Ltd. on April 17, 2012. Both companies had met with the Town to discuss their joint proposal to build a multi-use recreational facility and, on August 22, they were approved to send a delegation to the August 27 meeting.

In one email, Mr. Lloyd told Mr. West: "I Need [*sic*] you to show leadership with the sprung [*sic*] proposal!" He continued that the Ameresco presentation was "only a delegation" and that Council would not "make any motions or recommend anything but only ask questions! Process!" In contrast, he said the "motion being made [t]o go with Sprung is as a result of the staff report!"

The next day, Mr. Lloyd and Mr. West discussed the possibility of seeking private funding for recreational facilities – an idea that Ameresco would propose in its presentation on August 27. Mr. Lloyd replied that he did not see fundraising as a viable option:

Fundraising feasibility or more consultants or private partnership RFQ of RFP is merely stall tactics and if this project isn't approved to proceed on Monday then just kiss it goodbye because I will do everything I can the [to] derail it in the future as I will not have this as an election issue ... This passes tomorrow night the kids will be swimming in January and minor hockey will be skating in a new state of the art rink in May.

Dale this is exactly what you have Campaigned [*sic*] on and exactly what you have been preaching for ten plus years and now you have it at your finger tips so take a leading role tomorrow night and don't allow the bullshit to prevail as it has on this issue for years. [L]et [Ameresco] present and let them go away so we can get this done NOW!

When asked at the hearings why he felt so strongly that a final decision regarding recreational facilities needed to be made at the August 27 Council meeting, Mr. Lloyd stated:

I felt that it had to happen. Again, I micro-manage, I push to get stuff done. This thing has been spinning around ... for years and years and years. We had money from the Federal Government, the Provincial Government we sent back at one point in time because we didn't have funds to match it.

... It was time to get on with it ... other councillors, they had the same feeling.

There was so much noise going on from [supporters of the Steering Committee's multi-use facility] ... that, you know, if this wasn't going to go through now, then let's just forget it ... if we didn't get on with it now, before it got too late in ... this term, nothing would happen.

Later, Mr. Lloyd testified he believed that if the facilities were not completed before the next election, the matter would become an election issue, which would then stall construction indefinitely.

In this vein, both Mr. Lloyd and Ms. Cooper testified in response to questions from Mr. Bonwick that, if the recreational facilities had gone to a competitive tender, the corresponding delay would have meant that they would not have been finalized before the next election. They were concerned that, if a new Council was opposed to the recreational facilities, it (the new Council) could impede their completion.

I do not accept the suggestion that a competitive procurement would have necessarily prevented Council from completing construction before the end of its term. The Collus PowerStream sale showed that bidders can deliver comprehensive responses to an RFP within six weeks. BLT, in fact, prepared what was effectively a bid within three-and-a-half weeks of its first meeting with the Town on July 27.

Further Strategizing on the Day of the Council Meeting

On August 27, Mr. Houghton spoke with Mr. Bonwick by phone eight times before the Council meeting. He also had three calls with Ms. Stec. Mr. Houghton did not recall the specifics of the discussions but testified that some of the calls would have been to ensure that preparations for the Council meeting were complete. Mr. Houghton also recalled one discussion with Ms. Stec in which he asked her to make sure he received Sprung's presentation ahead of the Council meeting so it could be loaded onto the computer in the Council chamber.

I am satisfied that, when Mr. Bonwick discussed Sprung with Mr. Houghton, it was to advance both his own and BLT's interest in Council voting in favour of building a Sprung pool and arena. These discussions continued right up until the Council meeting itself.

Other Preparations for the August 27 Meeting

Councillor Chadwick's Enquiry Regarding Debentures

On August 23, Councillor Ian Chadwick emailed Ms. Leonard, the Town treasurer, asking for the following information:

- How using debentures to fund the purchase of the steering committee's multi-use facility would affect taxes.
- The extent to which taxes would need to be raised in order for the multi-use facility to be funded entirely by taxes.
- How much money the Town had available in reserves or other funds to put toward the construction of Sprung facilities, and what portion of the Sprung facilities would need to be funded by taxes and debentures.

Ms. Leonard responded to these questions the following day. With regards to the money the Town had available to fund the Sprung facilities, she stated:

At this point Ian I believe we have \$1.5m in reserve; \$1.3m coming from the County for the purchase of Poplar; \$88,000 in [development charges]

for Heritage Park landscaping; \$821,488 in [development charges] for Central Park and of course the \$8m from COLLUS. I am totally aware that Council has promised a public meeting prior to spending these funds.

An \$8m debenture would cost \$557,053 annually or \$42.86 (2.31%) increase for the average homeowner.

Aside from the information on the Town's reserves, development charges, and the Collus funds, none of the information provided by Ms. Leonard to Mr. Chadwick was included in the final staff report.

Call Between Mr. Houghton and Ms. Proctor

Marta Proctor, who had been out of the office on a previously scheduled vacation, emailed Mr. Houghton and the Executive Management Committee (EMC) on August 25, asking if one of them had time to review the staff report. "I've reviewed the information," she wrote, "and was hoping to clarify some of the numbers so I'm prepared to respond to any questions." Mr. Houghton invited her to call him the following day.

In her testimony, Ms. Proctor said she was concerned because the staff report did not have "the breadth or scope of the information" she thought the staff would be presenting to Council. She said that, on the call, she tried to explain her concern. She told Mr. Houghton she refused to sign off as agreeing with the contents of the report but would agree to sign off as having read it.

In further testimony, Ms. Proctor described Mr. Houghton's conduct on their telephone call as "extremely aggressive." She said he asked her why she was "being resistant" and why she was "not a team player." Moreover, "There was yelling, which I'm not used to from a person in his position." She said the conversation ended abruptly. Ms. Proctor testified that this conversation and the approach to the staff report led her to "do a lot of soul searching about what type of environment [she wanted] to be a part of." She said she worried for her job, as did others, and questioned whether it was worth remaining at the Town.

Mr. Houghton characterized his recollection as "diametrically different than Ms. Proctor's." He agreed he told Ms. Proctor that "she might not have

been a team player” but asserted that happened much later, after Council voted to proceed with the Sprung structures. On this call, Mr. Houghton said they “basically talked about where [the staff report] was going, what was happening, you know, would who be presenting [*sic*], that kind of stuff, and that she would be prepared to answer any questions if they were asked.”

Ms. Stec’s Search for Operating Cost Information

On multiple occasions before the August 27 meeting, Ms. Stec tried to obtain information about the operating costs of a Sprung building as compared to other construction types. On August 24, she emailed Sprung’s Tom Lloyd and Dave MacNeil, and BLT’s Dave Barrow:

Ed is going into several meetings today to share information regarding Sprung. I have armed him with the power point ... and hard copies of the power point, pool and arena projects. The only missing component is the cost comparison between traditional buildings, arenas and pool. If you could source out any numbers from existing projects for me this morning, it would be fabulous. When I did work with the school with both Yeardon and the Farley group, they has [*sic*] proformas for a diversity of their projects. Does Sprung have anything like that?

Tom Lloyd testified that the presentation Ms. Stec referenced in her email was the slide presentation he planned to use at the August 27 meeting. He said he provided the presentation to her because the EMC and Town Council “wanted a briefing, a preview of it, before we came up for the council meeting.” As noted above, Mr. Houghton spoke with Ms. Stec on the phone three times on August 27. He testified that, although he did not have a specific recollection, he believed one of the conversations with her was to ensure that he received Sprung’s presentation ahead of time so it could be loaded into the computer in the Council chambers.

With respect to cost comparisons, Tom Lloyd replied to Ms. Stec: “Attached is what we have. Dave Barrow, can you give Abby anything further?” The Inquiry did not receive the attachment to Mr. Lloyd’s email. Mr. Barrow responded: “I don’t have comparisons I believe you Tom had

this data.” Ms. Stec replied to Mr. Barrow: “Thanks Dave. I thought it would come from Sprung but don’t seem to be getting it from Tom??”

Ms. Stec tried to obtain operating cost information again on the morning of the August 27 meeting. She testified that Mr. Houghton asked her for information that compared the operational costs of Sprung structures to brick and mortar structures for use in his presentation to Council. She understood the request came as a result of community members who had been expressing concerns that the operating costs of the Sprung structures would be higher than those of a brick and mortar structure.

At 11:09 a.m., Ms. Stec sent an email to Tom Lloyd asking, “Any luck with the spreadsheet?” Mr. Lloyd responded, “Unfortunately, they have taken it off their website.” Ms. Stec replied:

OK thanks. Do you have contact information for them or other facilities that we could get operational costing on? Ed is still very much looking for some operational numbers.

Ms. Stec testified that the spreadsheet she requested from Mr. Lloyd was one she had previously seen on Sprung’s website. It compared operating costs of fabric structures with brick and mortar structures.

In his testimony, Tom Lloyd said he provided Ms. Stec with “quite a bit of operational data,” but that none of it included operating costs of Sprung pools or arenas. He noted that most of Sprung’s clients who had built pools or arenas had tied these facilities into other buildings, making it difficult to determine standalone operating costs for a Sprung pool or arena.

Mr. Houghton also asked Ms. Leonard for assistance with operating costs the day of the Council meeting. At 8:31 a.m., he forwarded Ms. Leonard a passage from a blog written by journalist Ian Adams and asked whether Ms. Leonard could calculate estimated operating losses for the Sprung structures. The blog stated:

The current operating losses for the municipal pool are \$30,000 for a facility that operates three months of the year. Operating 12 months, what will be the operating costs then [?] ...

If the question can't be answered, then council must defer the discussion until it can be answered ...

That would be the fiscally-responsible thing to do.

Ms. Leonard responded less than an hour later attaching a spreadsheet detailing the Centennial Pool operating costs and stating:

I estimate the operating loss would increase \$333,600 (\$275,000 more than we currently experience).

Marta and I did discuss this last Monday and we both felt that the loss would increase by around the \$270k mark without any real analysis. Staffing is the key.

In her testimony, Ms. Leonard stated that, at this point, staff working under Ms. Proctor had already provided her with operating cost information. She stated that the operating costs estimate she provided to Mr. Houghton was a “ballpark figure”:

We didn't know how much the increase in the chemicals would be for an indoor pool and those ... types of things. Staffing – we knew that there would be a requirement for more staffing but that the staffing would be offset to a large extent with increased revenues from the fact that it was now a twelve month pool ... as opposed to a three month pool that didn't operate on the rainy days or the bad days.

The process that began with Mr. Houghton seeking operating costs from Sprung through Ms. Stec and ended with Ms. Leonard providing a ballpark figure is emblematic of how the report drafting process that Mr. Houghton oversaw, including the short deadline, deprived Council of information that may have informed its decision on recreational facilities. Understandably, Council, staff, and the public wanted to know how much it would cost to operate a new arena and year-round pool, and how a Sprung building's energy use compared to other forms of construction. WGD advised that it did not have the time or the information to complete energy modelling. This gap led Mr. Houghton on a last-minute search for other sources of operating

cost information. In the process, Mr. Houghton learned that Sprung and BLT did not have that sort of information readily available.

Mr. Houghton's Slide Presentation

At 2:08 p.m. on August 27, Mr. Houghton sent a slide presentation titled “Central Park Staff Report.pptx” to members of the EMC and Ms. Proctor, asking them to review it in terms of inaccuracies. He asked Ms. Leonard specifically to look at the financial portion, “since you will be giving this part.”

Ms. Proctor responded with cosmetic changes and a suggestion that the number of additional staff be increased to two full-time persons, as opposed to one. The final version of the presentation stated that “an additional 1-1.5 full time equivalent employees” would be required. Ms. Leonard testified she likely reviewed the financial elements of the report and made any changes she felt were necessary.

BLT's and Green Leaf's Consulting Agreement

On the morning of August 27, Ms. Stec emailed Tom Lloyd, David MacNeil, Dave Barrow, Mark Watts, and Mr. Bonwick to arrange a meeting at the Green Leaf office at 4 p.m. “to coordinate final thoughts on the presentation for this evening.” Mr. Lloyd replied that he and the other Sprung representatives would be there.

When they met, Ms. Stec and Mr. Watts also signed their Intermediary Agreement before the August 27 meeting (see Part Two, Chapter 9). In other words, Green Leaf and BLT waited until confirmation that staff was recommending a sole-source procurement before formalizing their agreement.

The August 27 Council Meeting

Council met on the evening of August 27. After several presentations from Mr. Houghton, Ms. Leonard, and others, Council voted in favour of

constructing a Sprung arena and pool by a vote of 8–1 and 7–2, respectively. Before voting, several councillors remarked that, after years of inaction, it was time for Council to decide on recreational facilities – and that they believed the staff, having done their due diligence, had presented the best option.

The Council meeting was recorded on video. The Inquiry prepared a transcript of the video, which I reference throughout this section.

Ameresco's Presentation

Frank Miceli of Ameresco and Mark Palmer of Greenland made the first presentation. These companies had met with the Town earlier in the year on April 17 to discuss their joint proposal to build a multi-use recreational facility (see Part Two, Chapter 2). At the August 27 meeting, Mr. Miceli and Mr. Palmer proposed that the Town build a \$27 million multi-use facility using a “design-build-finance model,” which would involve Ameresco and Greenland assisting the Town in borrowing \$20 million for construction. As part of the presentation, Mr. Miceli offered to provide a request for qualifications document to Council and indicated that Ameresco / Greenland were “ready to respond to a Request for Qualification to ensure that the public process remains open and transparent.” In response, some councillors asked a few questions, but nobody made a motion in relation to their presentation.

Friends of Central Park's Presentation

After Ameresco, Paul Cadieux made a presentation to Council on behalf of the Friends of Central Park. He explained that the group “was formed as a reaction to an overwhelming number of residents who quite frankly are outraged by the lack of process and transparency with respect to Council on this matter.”

Mr. Cadieux raised several concerns about the staff report and the recommendation to proceed with the two Sprung structures. Among other issues, he questioned the lack of community and stakeholder engagement, why options for the pool other than fabric structures had not been investigated, whether a 45-year-old pool could operate in the winter, whether staff

had visited any other Sprung structures, and the late delivery of the staff report. “Nobody,” he stated, “has seen the staff report until Friday afternoon. And by Monday evening, we’re ready to vote on \$15 million.”

In his conclusion, Mr. Cadieux asked Council to defer a final decision and, instead, follow the process proposed by the Central Park Steering Committee. He implored Council to adopt a transparent process:

Establish an open and transparent process for soliciting feedback. I have to say this process has been anything but open and transparent. We’ve heard only what the newspaper has told us, and only what helps to support each other’s case. That’s not open. That’s not transparent.

Mr. Cadieux’s presentation ran from approximately 6:20 p.m. to 6:34 p.m. At 6:33 p.m., Deputy Mayor Lloyd emailed Mr. Houghton and said, “Ignore his bullshit.” Mr. Houghton replied, “I want to kick the crap out of him.” Mr. Lloyd responded, “You will with your presentation,” and then, “Kick his ass with the presentation.”

Sprung’s Presentation

When called upon to present, Mr. Houghton advised Council that Tom Lloyd from Sprung would present first. Although Mr. Houghton initially asked Sprung and BLT to present on August 21, neither Tom Lloyd nor Sprung was listed on the Council meeting agenda. Ms. Almas testified that Sprung was not included on the agenda because its presentation was scheduled as part of the staff’s presentation of the staff report. She testified that although it was rare for outside companies to participate in staff report presentations, she was not concerned about Sprung’s participation because staff was recommending that Council purchase Sprung structures.

Tom Lloyd presented a Sprung marketing pitch, as might be expected. He discussed Sprung’s history as a supplier of military buildings which had expanded to other uses, such as churches, casinos, and, more recently, recreational facilities. He noted, among other things, that Sprung had an “unlimited amount of endorsements and recommendations,” that the

company used “aluminum because it is the strongest material in the world,” and that even “Her Majesty the Queen cut the ribbon” at a Sprung airport she used regularly.

With regard to recreational facilities, Mr. Lloyd advised that Sprung had built a hockey arena outside Calgary and covered an outdoor pool in Kearns, Utah. He provided no other specific examples. At the end of the presentation, Councillor Keith Hull asked Mr. Lloyd if Sprung had ever enclosed a pool as old as the one at Heritage Park. Mr. Lloyd responded no – and added that Sprung had never covered a pool “as far North as this.”

No Mention of BLT

The August 27 staff report, which was overseen by Mr. Houghton, did not mention BLT or that the Town would be purchasing the structures from BLT, not Sprung. BLT was also not mentioned at the Council meeting.

In the course of his presentation, Tom Lloyd stated:

Our licence partnering company we work with here in southern Ontario does a lot of sports and entertainment work, and it's been recently named the Partner of the Year by the Maple Leaf Sports and Entertainment Group. Those of you who go downtown may know of a bar called the Real Sports, right beside the Air Canada Centre, which was recently named by ESPN as North America's greatest sports bar.

At the hearings, Mr. Houghton testified he could not say for certain whether Mr. Lloyd was referring to BLT in this description. Deputy Mayor Rick Lloyd testified that although he knew about BLT shortly after the Council meeting, he did not know if Council members were told about BLT before they voted.

I am satisfied that Council was not advised that the Town would be contracting with BLT, not Sprung. Given the scope of the commitment, the staff report should have identified the company that was actually going to build its new recreational facilities.

Mr. Houghton's and Ms. Leonard's Presentation

After Tom Lloyd's presentation, Mr. Houghton and Ms. Leonard each gave sections of the staff report, assisted by the slide show. During his remarks, Mr. Houghton spoke about the steps that led from the recommendations of the Central Park Steering Committee to the staff report:

We did look at a whole bunch of different options. We looked at several different options. We looked at a number of different fabric buildings, we looked at bricks-and-mortar buildings and we looked at steel fabrications buildings. We talked to our consultant, our architectural consultants. We got prices on those kinds of things.

Ms. Leonard testified that she did not know what Mr. Houghton was referring to when he stated that staff had looked at different fabric buildings.

Mr. Houghton mischaracterized the involvement in the staff report of staff members such as Ms. Almas and Ms. Proctor:

We were working as a team ... That was my intent. I should have said this is very much a team effort. Poor Marta, the day after our July 16th said "I'm going to be on holidays. What am I going to do?" So we supported Marta, and she's been part of feeding in the information. Marjory's been very much involved, our treasurer. Ms. Almas has been very much involved. Larry Irwin's been very much involved. Dave [McNalty]'s been very much involved. And it has been very much a team effort to put this together, as well as the consultants getting the information. So I should have mentioned that at the beginning. I apologize for that.

Finally, on the recommendation to sole source, Ms. Leonard stated:

Our Procurement Policy ... does recognize that there are times when single or sole source purchasing may be the recommended method for procurement. We do believe that due diligence was maintained throughout the process. During our research of the varying forms of construction[,] each of the comparators knew we were looking at costs

for pre-engineered steel building and fabric or architectural membrane construction since we already did have the costs for bricks and mortar estimated in the Steering Committee's report. So in that vein it did interject an element of competition into that process.

Through the research and investigation phase it was determined that the architectural membrane building would provide the most cost-effective and beneficial solution for the taxpayers, both capital and operational wise.

Again, through our research it was determined that there was only one supplier of this leading-edge technology that had proven track record, that would provide what we needed at this time.

I note that, at the meeting, Ms. Leonard toned down the language regarding competition and did not expressly state that WGD and BLT were in competition. The presentation, nevertheless, repeated the inaccurate information in the staff report that a sole source was permissible.

Council Votes

Each member of Council spoke after Mr. Houghton's and Ms. Leonard's presentation. Mayor Sandra Cooper, Deputy Mayor Rick Lloyd, and Councillors Ian Chadwick, Sandy Cunningham, Kevin Lloyd, Dale West, and Mike Edwards all favoured proceeding with the staff recommendation, each commenting that, after previous councils' inaction, it was time for this Council to move forward with recreational facilities.

Councillor Joe Gardhouse spoke in favour of the arena, but he asked for the decision on the pool to be deferred for 90 days so that a pool consultant could complete a business plan and structural report. As he put it: "I think that is worth a second look and there is no rush in that."

Councillor Keith Hull spoke at length in opposition to the staff recommendation, echoing many of the points raised by Mr. Cadieux. He regretted that Council had not given broader parameters to the Central Park Steering Committee to look at options beyond Central Park. He also regretted Council's July 16 direction (which he supported), noting: "[I]t is a case of you get what you ask for." He continued:

I apologize – that, if you feel that you didn't have the time, if you felt that you pushed back and we didn't listen, then I wasn't listening or I didn't hear that and I apologize for that. Because certainly, when I read the report that's been presented tonight, and the time in which it's been prepared, I am concerned that we've rushed to a conclusion and there are numerous questions still to be answered.

Councillor Hull also noted that “we as a Council have never determined what we as a Council feel comfortable in terms of spending, whether its 2 million, 5 million, 10 million. I mean, we haven't even established that parameter yet.”

After each councillor spoke, Council voted to construct a Sprung arena by a vote of 8 to 1, with Councillor Hull voting “nay.” For the pool, Councillor Gardhouse tabled a motion, seconded by Councillor Edwards, that Council defer the motion to cover the outdoor pool with a Sprung structure “until a professional reviews the plan and structural audit.” That motion was defeated 8–1, with only Councillor Gardhouse voting in favour. Ultimately, Council decided to proceed with the pool by a vote of 7–2, with Councillors Hull and Gardhouse voting nay. No councillors declared a conflict of interest.

In his closing submission, Mr. Bonwick argued that the councillors are “independent thinkers” with access to a “multitude of information sources in order to make a final decision on any given issue.” He continued that “if the majority of council does not feel they have enough information, they have the authority to delay any decision before them.” Mr. Houghton made similar arguments in his testimony and closing submissions, suggesting that if Council members had concerns about the staff report or the presentation, they would have raised it. The thrust of these submissions is that Council independently expressed its will when it voted and, in doing so, absolved any errors or flaws in the information staff presented.

I reject this argument. Councils are entitled to rely on staff reports to provide fair, objective, and complete information. While Council retains the power to question the assumptions, process, or recommendations of a staff report, it can do so in a meaningful way only if the staff report is transparent.

In this respect, at the August 27 meeting, several councillors stated in

their remarks that they were relying on staff's due diligence. For example, in Councillor Edwards' words:

I'd first like to say that I have faith in the staff report. I don't think we ask our staff to do something and report something unless they've done their due diligence. And if so, they shouldn't be here.

And so I appreciate the report and the information that's come forward. I've had sufficient time to digest it, and I think I've had sufficient time over the years to determine what the needs of the community are. They've been reported many times.

Mayor Cooper, Deputy Mayor Lloyd, and Councillors Cunningham, Kevin Lloyd, and Chadwick all referenced staff's due diligence as a reason for voting in favour of the Sprung structures.

At the hearings, Ms. Cooper testified that she relied on the staff report and presentation when voting to proceed with Sprung. Deputy Mayor Lloyd also testified that, in making his decision, he relied on the cost information, representations about LEED, and the advantages of turnkey construction.

Conclusion

The efforts of Mr. Houghton, Mr. Bonwick, and Deputy Mayor Lloyd to promote Sprung to Council succeeded. Council voted to build two Sprung structures relying on a flawed staff report. As I discuss in Part Two, Chapter 13, after the meeting, Mr. Houghton quickly arranged for the execution of the contract and for the Town to pay BLT a substantial deposit. In turn, BLT used this deposit to pay \$756,740.42 (including HST) to Mr. Bonwick through his company Green Leaf.

Town and BLT Contract – and the Payments That Followed

Within just 72 hours of Council's decision to approve the purchase and construction of two Sprung structures, the Town signed a construction contract with BLT Construction Services Inc. and paid BLT a deposit of more than \$3 million. The quick turnaround time was the result of acting Chief Administrative Officer (CAO) Ed Houghton's efforts to fast track the execution of the Town's agreement with BLT, a goal he prioritized over protecting the Town's interests. BLT and Green Leaf Distribution Inc. benefited from the hasty contract signing. BLT, which was able to secure payment of 25 percent of the contract price on signing, immediately used part of this amount to pay Green Leaf's fee of \$756,740.42 (including HST).

Contract Prepared

Immediately after Council approved the purchase and construction of two Sprung facilities, Mr. Houghton began working with Green Leaf and BLT to finalize the details of a construction contract.

Initial Discussion of Payment Schedule

On August 28, 2012, at 9:52 a.m., Abby Stec of Green Leaf emailed Dave Barrow and Mark Watts of BLT, stating that she and Mr. Houghton had discussed a construction agreement between BLT and the Town. Ms. Stec stated:

Ed has indicated the following tentative schedule would be appropriate moving forward:

He has asked for BLT to provide an agreement to Town [sic] by Thursday or Friday of this week. I believe that they want to include all of the extras that were broken out separately in the budget. I will confirm this later today.

They would like to have the agreement signed and have a 25% draw for you upon signing.

Tentative schedule to follow:

- 2nd draw, 25% at completion of site work
- 3rd draw, 25% prior to erecting
- 4th draw, 15% at substantial completion
- 10% hold back

If you are both available anytime between 1 and 4 pm today Paul and I would like to get your thoughts on the schedule and finalize the scope of work. Please let me know and I will send out the call numbers.

Ms. Stec testified that Mr. Bonwick provided the information in the email and that she sent the email at Mr. Bonwick's direction. She believed Mr. Houghton proposed the payment schedule described in the email but stated that her only basis for that belief was the email itself. She did not have any independent recollection of discussions between Mr. Houghton and Green Leaf regarding the payment schedule.

Mr. Houghton recalled discussing a potential payment schedule with Ms. Stec. He noted that he told Ms. Stec the payment schedule sounded "reasonable" to him, but that he would need to have the contract reviewed to make sure "everything's appropriate." He stated that if, upon review, the schedule "didn't make sense," he would speak to BLT about changing it. As I discuss in this chapter, Mr. Houghton made no attempts to negotiate the payment schedule.

Mr. Bonwick testified that he did not recall having any discussions with BLT about a potential payment schedule after the August 27 Council meeting. He did, however, recall having discussions about the payment schedule before the Council meeting. He testified that, although he could not remember specific details, he likely spoke to Mr. Houghton around August 19.

He informed him that BLT would require a sizable upfront payment in a potential contract with the Town. As I discuss in Part Two, Chapter 9, on August 19, Ms. Stec emailed BLT representatives stating, among other things, that “Paul has had preliminary discussions with Ed regarding the first draw and it will be substantial enough to cover both the compensation and your initial operation costs.”

Mr. Bonwick also recalled discussions with Ms. Stec and Mr. Barrow on August 24, during which it was confirmed that BLT would request a “substantive deposit” in its contract with the Town.

I am satisfied that, prior to the August 27 Council meeting, Mr. Houghton knew as a result of his discussions with Mr. Bonwick that BLT would be requesting a significant deposit. This information was relevant to Council’s decision to purchase the Sprung structures and, as such, should have been conveyed to Council during the meeting.

Mr. Houghton’s and Ms. Stec’s Contract Discussions

Ms. Stec testified that she also spoke with Mr. Houghton about the contract the Town would sign with BLT. She recalled indicating that a standard-form construction contract, called a CCDC contract,* would “likely be applicable.” On the afternoon of August 28, Ms. Stec emailed BLT about her conversation, writing:

I just spoke with ED [sic] and he is content with a standard CCDC contract and regular holdback provisions. In terms of scope of work, please include all extras including a propane zamboni. He also asked me to calculate the dollar total for the first draw at 25% so the cheque will be ready for you upon signing.

As discussed, please send the agreement on Thursday [August 30] to facilitate any changes that need to be made. We can then schedule a meeting in Collingwood to finalize the drawings and discuss timelines.

* Canadian Construction Documents Committee contract – a standard-form construction contract used for design-build projects.

Ms. Stec testified that “regular holdback provisions” represented 10 percent of the total amount of the contract. Mr. Houghton confirmed that Ms. Stec suggested a CCDC contract and he agreed it was acceptable but noted it would have to be reviewed by the Town solicitor.

Finalization of Budgets

At 3:05 on the afternoon of August 29, Mr. Barrow emailed Ms. Stec asking for a copy of Mr. Houghton’s slide presentation from the August 27 Council meeting. Mr. Barrow stated that he needed the presentation “to make sure we have all items listed which he included at the meeting.”

Five hours later, Mr. Barrow sent Ms. Stec two budgets for a Sprung pool cover and two for a Sprung arena. For each structure, one budget showed the price for every line item that was included in the total cost, while the other budget listed line items without prices and provided only total costs. In his covering email, Mr. Barrow stated:

Please see the following pricing. I have attached both with line items and without. I think for certain people it should only be the total number rather than the questions on why is this that much and so on. It may be better if we just give total to the contract with lined list. Thoughts?

Mr. Barrow testified that he suggested using versions of the budgets without line items because,

What I found in any budget I did with anybody is if you give them a line by-line item, they always seem to look at numbers and say why this is so high, but never the numbers and say why is this so low, so that was my suggestion on – that was just a suggestion.

Mr. Houghton did not recall having any discussions about which of the two budget versions would be used in the final contract between the Town and BLT, though he noted that including the versions without line item prices in the contract, “wouldn’t have been very helpful.” As will be seen below, only the budgets without the line item prices were appended to the contract.

The budgets Mr. Barrow sent stated that the total cost for the Sprung pool, including all options and taxes, was \$3,688,606.93, while the total for the arena, including all options and taxes, was \$8,710,294.04. The Town paid the first 25 percent deposit owed under the contract based on these amounts.

The pool budget Mr. Barrow prepared after consulting staff's slides from the August 27 meeting was approximately \$38,000 higher than the total provided in the staff report and approved by Council. The evidence suggested that the increase was due to the inclusion of items in the budget that were identified as "extras" in the staff report. The inclusion of these costs, however, also resulted in pricing for the facilities that differed from those presented in the staff report.

Mr. Bonwick's Success Fee

Disclosure

With final budgets, Green Leaf could calculate its 6.5 percent success fee. Thirty minutes after Mr. Barrow sent BLT's final budgets to Ms. Stec on August 29, Mr. Bonwick sent an email to Mr. Houghton, stating: "Gross is 675,000.00 approx ... maybe a bit more." Fourteen minutes later, at 8:48 p.m., Mr. Houghton forwarded that email to his wife, Shirley.

Mr. Houghton and Mr. Bonwick testified that discussions the two were having about Mr. Bonwick's role with BLT prompted Mr. Bonwick's email. Mr. Houghton stated that Town staff had been receiving emails questioning Council's decision to build the Sprung structures and that these emails caused him to contact Mr. Bonwick and ask him about the nature of his work for BLT. Mr. Bonwick also recalled Mr. Houghton asking him about his work for BLT. He testified that their conversation centred around rumours which had been circulating that Mr. Bonwick worked on the Sprung project in some capacity and had been compensated.

Mr. Houghton testified that, after Mr. Bonwick detailed his work for BLT, Mr. Bonwick explained that Green Leaf's compensation would be similar to that of a real estate agent and confirmed the fee would come out of BLT's profits. Mr. Houghton and Mr. Bonwick each stated in testimony that Mr. Bonwick twice offered to disclose the amount of the fee to

Mr. Houghton but Mr. Houghton declined to hear it, saying it was not his business.

I reject Mr. Houghton's rationale for refusing to find out about Green Leaf's fee. Mr. Houghton was the Town's CAO, so the fee BLT intended to pay Mr. Bonwick's company for successfully lobbying the Town was his business. Declining the information did not absolve him of his duties to the Town. Intentionally turning a blind eye to this information was not an acceptable response.

According to Mr. Houghton, after this conversation, he received the above-mentioned email from Mr. Bonwick stating the amount of Green Leaf's commission. Mr. Houghton testified that he received the email on his Blackberry as he was leaving the Collus PowerStream office and did not read it right away because his poor eyesight made it difficult for him to read emails on his phone. As a result, he forwarded the email to his wife's address so he could read it on a computer in his home office. When asked why reading the email on his home computer necessitated forwarding the email to his wife, Mr. Houghton stated:

Typically when I would do it, I would – I would send it to Shirley's because her ... computer was up and running. I carry my computer all the time, I could turn it on and do those things, but I typically would ... do that because it was – it was usually on. It was always on. That's what I did.

Mr. Houghton stated that, once he arrived home, he read the email in full. His reaction to the amount of Green Leaf's fee was, "[t]hat's a big number."

When Mr. Bonwick was asked why he disclosed the fee to Mr. Houghton, Mr. Bonwick noted that the email "followed up on a conversation that had taken place earlier. I trusted Mr. Houghton.* I considered him a friend." Mr. Bonwick later stated: "I wasn't interested in hiding the fee ... I just sent him a follow up to the conversation ... Nothing more than that." Mr. Bonwick testified that he did not instruct Mr. Houghton to keep the amount of Green Leaf's fee confidential and stated that he did not disclose the fee to anybody else on Town Council or staff.

* As I discuss in Part Two, Chapter 9, Green Leaf's agreement with BLT required BLT to keep Green Leaf's fee confidential.

Mr. Houghton did not disclose Green Leaf’s fee to anybody on either Council or staff. He testified that he did not divulge it because he assumed others knew of Mr. Bonwick’s work for BLT, and Mr. Bonwick had assured him that Green Leaf’s commission was not “coming directly out of Collingwood’s pockets.” When asked whether, as CAO, he felt it was important to share the information he received from Mr. Bonwick with Council, Mr. Houghton responded:

[I]t’d already been confirmed that this was coming out of the profits of BLT / Sprung ... I thought there were others that knew, I didn’t think it was for me to tell anybody. If it’s – there’s no obligation for others, then why is the obligation there for me, and if there was no concern less than a year earlier, that Mr. Bonwick was working and – and getting paid to do things, why is it this now something different?

[...]

If – if this – if you are working with BLT, then it really has nothing to do with me. I don’t know how much we spent for concrete or for electrical or those things.

[...]

I didn’t do it for any other reason that [sic] it didn’t appear that there was an issue or an obligation or a conflict, because they had already just done that less than a year previously.

I do not accept any of Mr. Houghton’s evidence concerning his discussions and failure to disclose Green Leaf’s fee for several reasons.

First, despite Mr. Houghton’s evidence, Mr. Bonwick’s involvement in the Sprung project was “an issue.” Both Mr. Houghton and Mr. Bonwick testified that Mr. Bonwick’s email was an extension of a conversation Mr. Houghton initiated because rumours had begun circulating regarding Mr. Bonwick’s involvement in the Sprung project and whether he was compensated. If Mr. Houghton had information that would shed light on those rumours, it was incumbent on him to share it with Council and staff.

Second, there is no indication that anybody else knew the amount of Green Leaf’s commission. Although Deputy Mayor Rick Lloyd was aware of Mr. Bonwick’s work for Green Leaf and BLT, he testified that he did not find out the amount of Green Leaf’s fee until 2018.

Third, the notion that Green Leaf's fee came out of BLT's profit does not justify withholding information regarding Mr. Bonwick's involvement in the Sprung project from Council and Town staff. As I indicated in Part Two, Chapter 9, it is not reasonable to rule out the possibility that the Town paid more for the Sprung facilities than it would have but for Mr. Bonwick's involvement. Regardless of the source of Green Leaf's commission, however, the fact remains that Mr. Bonwick earned a substantial sum for work related to a Town procurement that involved Mr. Bonwick lobbying Town representatives. This was important information for Council and staff to consider before finalizing the Town's contract with BLT. As I discuss below, Mr. Houghton failed to negotiate the Town's construction contract with BLT and agreed to certain terms that left the Town exposed to risk. The disclosure of Green Leaf's fee may have drawn more attention to the unfavourable payment terms to which Mr. Houghton committed the Town.* I also note that Mr. Houghton testified he took no steps to confirm with BLT that Green Leaf's commission was coming solely out of BLT's profits. Mr. Houghton thus chose not to disclose Green Leaf's fee to Council or staff based solely on the assurances of the person receiving the commission that the commission was not being paid at the Town's expense.

Fourth, the fact that no concerns were raised at the June 29, 2011, meeting at which Mr. Bonwick disclosed his work for PowerStream to certain councillors and staff members does not excuse Mr. Houghton's failure to disclose Green Leaf's fee. As I discuss in Part One of this Report, the disclosure that took place at the June 29 meeting was piecemeal and insufficient. Further, Mr. Bonwick's work for Green Leaf involved different responsibilities and the compensation was more than twice what he received for his work for PowerStream. As such, Mr. Houghton should have provided Council and senior staff at the Town with the opportunity to assess the issues raised by Green Leaf's work for BLT.

Finally, I do not accept Mr. Houghton's evidence regarding Green Leaf's compensation that "I didn't think it was for me to tell anybody. If it's – there's

* As I discuss in Part Two, Chapter 9, Green Leaf's intermediary agreement with BLT required BLT to pay Green Leaf's fee in full as soon as BLT's contract with the Town was signed. As I discuss below, the contract required the Town to pay 25 percent of the contract price upon signing, before any work was completed.

no obligation for others, then why is the obligation there for me”; and “it really has nothing to do with me. I don’t know how much we spent for concrete or for electrical or those things.” Green Leaf’s commission did not have “nothing to do” with Mr. Houghton. As CAO, Mr. Houghton was the head of Town staff and, as such, he had an obligation to ensure Council and staff had all information relevant to the decision concerning Sprung facilities.

Green Leaf’s commission was not akin to one for concrete or electrical work. As I discuss below, those items, too, should have been the subject of Mr. Houghton’s scrutiny and negotiation with BLT. However, costs for concrete and electrical work are expected in the construction of recreational facilities. Members of Council and staff (apart from the deputy mayor), in contrast, had no reason to expect that a company owned by the brother of the mayor stood to earn approximately \$675,000 for lobbying Council’s approval of the Sprung facilities.

That Council and staff were blindsided is evident from Council and staff members’ testimony about their reaction when they learned Mr. Bonwick had benefited from Council’s decision to purchase and construct the Sprung facilities.

Sandra Cooper testified that “it would have been beneficial” for her to have been informed of Mr. Bonwick’s commission and stated that, if Mr. Houghton knew of Mr. Bonwick’s involvement in the Sprung initiative, she would have expected him to notify her. She further stated that, if she had known about Mr. Bonwick’s commission, she would have consulted with the Town clerk and possibly the Town solicitor to assess whether any further steps should be taken.

Deputy Mayor Lloyd testified that, when he first discovered the amount of Green Leaf’s commission, his response was “wow,” and he wondered what work Green Leaf had done to earn such a substantial fee. Mr. Lloyd agreed it was “unusual” for the mayor’s brother to earn an undisclosed \$1 million on Town business (the Collus share sale and the recreational facilities).

Sara Almas, the Town clerk, testified that her discovery that Mr. Bonwick benefited from the Sprung initiative provided more clarity on why there was so much pressure to complete the staff report and made her reconsider the due diligence that staff had carried out regarding recreational facilities.

Finally, Marjory Leonard testified that, when she discovered the amount

of Green Leaf's commission, she was, "very surprised ... gobsmacked, actually, if you want to know the truth. It was ... I'm astounded, sickened." During her cross-examination, the treasurer was asked by Mr. Bonwick why she took such exception to a commission that had been agreed to between two private companies and that did not cause additional cost to the Town, Ms. Leonard replied:

I would take exception to it because there was no room then for the Town to have negotiated further down or further with BLT in any way, shape, or form, and it's also my understanding that that negotiation never did take place, but there could have been an opportunity to negotiate prices with BLT.

Had Council and staff been informed that Mr. Bonwick's company was set to earn a commission from the approval of the Sprung recreational facilities, they very well may have changed their respective approaches to researching, recommending, voting on, or negotiating the construction of those structures. Council may have felt compelled to use a competitive bidding process. Council and staff deserved the opportunity to determine how this information affected the discharge of their responsibilities and, as head of staff, Mr. Houghton owed them this opportunity. In failing to disclose this information, Mr. Houghton undermined the interests of the Town.

As evidenced in Ms. Almas's and Ms. Leonard's testimony above, the amount of Green Leaf's fee was substantial enough that it undermined staff's confidence in the recommendation to purchase and construct the Sprung structures. As I will explain in Part Two, Chapter 14, once questions about Mr. Bonwick's dealings with the Town arose, confidence in Council's decision was undermined further. Had Mr. Houghton disclosed Green Leaf's fee as soon as Mr. Bonwick revealed it to him, his decision to forgo all negotiations with BLT may have come to light. This knowledge would have permitted staff to at least consider negotiating with BLT about the contract price and payment schedule. Of course, it would also have provided Council and staff with the opportunity to revisit the recommendations in the staff report.

Effect on Public Confidence

Although disclosing the amount of Green Leaf’s commission may have helped lessen the impact of the fee on the public perception of the Council’s decision to sole source the Sprung recreational facilities, the fact remains that a lobbyist earning a success fee of any kind on a transaction will always risk undermining the integrity of the transaction.

Mr. Houghton testified that Mr. Bonwick’s lobbying work did not affect Council’s decision to engage in a sole-source procurement of the Sprung pool and arena:

I think, if Mr. Bonwick wasn’t involved, the same event would have happened. I ... can tell you with every fibre of my body that not one thing would have changed if Mr. Bonwick was not involved.

In contrast, when Mr. Bonwick was asked at the hearings whether he thought the amount of his company’s commission was a substantial amount of money for a month’s work, he testified no, explaining: “I think one has to reflect on the value that Green Leaf brings to the table and, more specifically, myself.” He continued:

I think one needs to reflect on the number of years, the amount of networking, the amount of effort and work goes on in terms of building relationships within regions throughout Simcoe County, the province, the Federal Government.

One tends to develop long-term relationships, they get involved in numerous initiatives throughout the community, throughout the province, throughout the country.

And a lot of that is not dealt through compensation but rather investment from myself or from companies that I would be associated with, and so it’s not simply a case of saying it’s – the finite term is three weeks of five weeks.

It’s a case of there’s been years go into develop something that actually can lend value to a client.

Mr. Bonwick did not agree with Mr. Houghton that the Sprung buildings

would have been built without Green Leaf's involvement, remarking that he would "like to justify [my] own existence and that of [my] company."

The fact that it was not apparent, even to Mr. Houghton what exactly Mr. Bonwick did to earn Green Leaf its success fee is indicative of how success fees can undermine public confidence once the public finds out about them. If it is not immediately apparent why such a large sum was paid to a lobbyist or lobbying company, suspicion will arise that something inappropriate has happened.

In his closing submissions, Mr. Bonwick acknowledged the capacity that lobbyist success fees have to undermine public confidence:

In further addressing fees for service as it relates to lobbying / agents, I would agree for the purpose of public perception that success fees, especially large fees undermine confidence in the procurement process, irrespective of the value the client associates with the recommendations or actions of their consultant (lobbyist / agent). There are several other options available as it relates to long term retainers that can still provide a level of compensation that both parties feel is reasonable based on the value of service or strategic advice.

I agree with Mr. Bonwick's assessment. As set out in my recommendations, lobbyist fees should be disclosed to ensure that no contingency fees or any type of payment, bonus, or commission connected with or tied to a successful outcome are paid to the lobbyist.

Plans for BLT Payment

The day after disclosing the amount of his commission to Mr. Houghton, Mr. Bonwick worked to ensure that BLT sent the Town payment information required to finalize the construction contract.

On August 30, at 8:56 a.m., Mr. Bonwick sent Mr. Barrow draft language for an email and asked him to,

Please edit, cut and paste the following. Send to Ed asap.

I would also ask that a billing schedule be included with an invoice for the first installment. They will try to have a cheque ready if they get it in the next little while.

The draft email composed by Mr. Bonwick thanked Mr. Houghton for staff's "professional, detailed and comprehensive approach" to the recreational facilities initiative. It indicated that BLT would "create flagship recreational buildings for Collingwood" that incorporated "the latest technologies." The email concluded:

[W]e have prepared our construction agreement along with the payment schedule for your authorization. Please let us know if it is convenient to meet at 12 pm today to complete this part of the process. Subject to authorizing these documents our team will begin work Tuesday.

Mr. Bonwick confirmed that the meeting proposed in the email was to finalize transaction documents between the Town and BLT.

About an hour later, Mr. Barrow sent Mr. Houghton the email drafted by Mr. Bonwick, attaching a payment schedule and invoices for the Town's first payment. The payment schedule read as follows:

Day of signing contract: 25% deposit
Draw # 1 completion of ground preparation: 25% draw
Draw # 2 Sprung structure arrival to site: 25% draw
Draw # 3 Substantial completion: 15%
Final payment 45 days after substantial completion

The invoices charged the Town \$2,177,573.51 for the Sprung arena and \$922,151.73 for the Sprung pool (taxes are included in these figures). These totals represented 25 percent of the costs for a Sprung arena and Sprung pool inclusive of all options included in the budget Mr. Barrow sent the day before to Ms. Stec.

Mr. Bonwick's email kicked off a process in which the Town signed the contract and cut the cheque to BLT by the end of the day, enabling BLT to immediately pay Mr. Bonwick's company in full.

No Negotiation

Mr. Houghton, the Town's sole contact with Sprung and BLT, did not attempt to negotiate with BLT, undermining the Town's interests in a number of ways. First, the Town likely paid more than it ought to have for the projects. Second, BLT was not required to post a performance bond, exposing the Town to the risk of contractor default. Finally, the Town agreed to a payment schedule that required it to make two large payments before BLT had performed any substantial construction work, further exposing the Town to the risk of default and lost costs. Although I cannot now say how much additional money these factors cost the Town, the information before the Inquiry strongly suggests that the financial consequences to the Town resulting from Mr. Houghton's decision to accept BLT's terms without negotiation were substantial. For example, the markup BLT applied to the Sprung structures was 30 percent.

Contract Price

Mr. Houghton did not attempt to negotiate the contract price with BLT. He testified that he didn't believe the Town was permitted to negotiate.

I do not accept Mr. Houghton's evidence for three reasons.

First, the basis for his belief defies logic – on his evidence, it was a conclusion he came to on his own, without consulting the applicable Town policies and by-laws or discussing the matter with experienced Town staff or members of Council. The Town's procurement policy, in fact, explicitly contemplated negotiation when staff recommended procuring goods or services from a single source.

Second, only eight months earlier, Mr. Houghton had been involved in negotiations with PowerStream to increase its strategic partnership bid. Mr. Houghton struggled to explain why he believed the Town could not negotiate with BLT when he had recently participated in a negotiation with PowerStream in the strategic partnership RFP. He testified that they were "two different scenarios"; stated that "we were talking to PowerStream through Mr. Muncaster"; and noted that, with PowerStream, the Town was

selling, as opposed to purchasing. He did not explain how any of these reasons translated into a prohibition on negotiating with BLT.

Third, as I discuss in more detail above, Mr. Houghton knew by August 29 that BLT was paying Mr. Bonwick’s company approximately \$675,000 in relation to the arena and pool. This payment would have indicated to him that there may be room in BLT’s budgets for negotiation.

In his testimony, Mr. Houghton argued that Treasurer Marjory Leonard, Dave McNalty (the Town’s manager of fleet, facilities and purchasing), and Deputy Mayor Rick Lloyd should have told him that he was permitted to negotiate the contract. I reject this attempt to spread the blame. Mr. Houghton never asked any of them whether he could negotiate, a point that should have been obvious in any event.

Mr. McNalty said he had no knowledge of the steps the Town took to negotiate.

Ms. Leonard testified that she believed Mr. Houghton had negotiated with Sprung and BLT. She said she was “stunned” when she heard Mr. Barrow’s evidence at the Inquiry that there were no negotiations, explaining she “would have expected that the department head or the person in charge would have negotiated the best possible price and best possible outcome for the Town, the taxpayers ... the community.”

Although Deputy Mayor Lloyd first testified that he was not surprised to learn the Town did not attempt to negotiate with BLT, he ultimately acknowledged he assumed the price had been negotiated. Mayor Cooper also testified that she “would hope that – in good faith, that the Town would negotiate the ... best price for the Town.”

When asked what steps he did take to protect the Town’s interests, Mr. Houghton identified two factors. First, he believed Sprung and BLT quoted a fair price because the two companies wanted to use Collingwood “as a showcase” for their future clients. Second, he said that the July 16 Sprung budgets served as a check on BLT’s price, explaining:

[W]e have the – the July 7–16th estimates that we took the opportunity once they asked for them, was that we took that opportunity to say, look at, they better be in kind of keeping with this because we have these numbers.

Although I agree that the showcase potential of the Collingwood projects and the July 16 budgets could have served as leverage for the Town in its dealings with BLT, Mr. Houghton failed to deploy that leverage when he chose to refrain from negotiating with the company. The notion that BLT would offer its best price without any pressure from the Town to do so defies logic and common sense. It is also inconsistent with Tom Lloyd's description of Mr. Barrow's approach to business. As Mr. Lloyd testified of Dave Barrow, "If I said it was free, he'd still try to negotiate with me ..."

Performance Bond

BLT did not post a performance bond for the pool and arena construction projects.

Town Deputy Building Official Ron Martin testified that a performance bond ensures the construction project is completed within the cost that has been agreed upon by the parties. He explained that a performance bond is typically put in place before, or in conjunction with, the signing of the contract. He further explained that it is similar to an insurance policy in that if something such as receivership or bankruptcy happens to the contractor partway through a project, the insurance company will step in and complete the project for the original contract price.

Mr. Martin said he had never been involved in a Town construction project the magnitude of the arena and pool without a performance bond, nor was he aware of a Town construction project of that magnitude that didn't include one. Mr. McNalty also testified that it would have been typical "to have some financial surety" to ensure the project could be completed "if the prime contractor failed to do so." He rejected the notion that no security was required where a design-build construction model was used.

When asked what steps he took to protect the Town against a breach of the contract by BLT, Mr. Houghton stated:

I think that we also looked at the fact that Sprung has been in business for 125 years. I don't think that they would allow for their partner to create a shabby, shoddy project ... I don't think they – they were – they'd been in business for a 125 years if they would allow that.

There was no need for Mr. Houghton to rely solely on Sprung's perceived longevity in the market as a guarantee that BLT, a different company, would fulfill its contractual obligations. As Mr. Barrow explained in his testimony, before a bonding company will issue a bond, it will conduct due diligence relating to the contractor's finances and assets to determine whether the contractor is capable of delivering on the contract it has been awarded.

Deputy Mayor Lloyd testified that, at the time the contract was signed, he was not aware there was no performance bond in place. When asked for his reaction to "learning today that there was no performance bond in place," Mr. Lloyd responded that the Town was very fortunate BLT "lived up to their expectations and beyond."

I agree with the deputy mayor that the Town was fortunate. Proceeding without a performance bond put the Town at risk. While it was open for the Town to assume that risk, the question was never placed before or considered by Council.

Mr. McNalty testified that the owner may also address the risk of contractor non-performance by arranging the payment schedule for financial security where the owner pays for the work that has already been performed, not in advance. As I discuss below, the payment schedule that Mr. Houghton agreed to on behalf of the Town offered no such protection.

Payment Schedule

The payment schedule provided for in the contract required the Town to make the following payments:

- Day of signing contract: 25% deposit
- Draw # 1 completion of ground preparation: 25% draw
- Draw# 2 Sprung structure arrival to site: 25% draw
- Draw# 3 Substantial completion: 15%
- Final payment 45 days after substantial completion: 10%

Mr. Martin testified that he was "a little surprised" when he saw the payment schedule, stating: "[W]hat surprised me the most when I saw this was that the contractor, builder, had 25 percent payment really with – I had

nothing. The Town had nothing other than a signed contract and they had 25 percent of ‘X’ million dollars.” He explained: “Worst case scenario: Somehow a large amount of money has been paid and should have – something happened and the contractor just [says], ‘bye, what would we – what would we do? What position would the Town be in?” Mr. Martin said he had never seen a payment schedule like that on any of the construction projects he had worked on. He believed the Town should have been better protected.

Mr. Barrow proposed the payment schedule. He testified that BLT preferred to use the Town’s money to pay the trades working on the arena and pool, explaining: “[W]e would rather have the Town pay for it upfront and not have to carry the cost of it.” He described the payment schedule as “a bit of an aggressive payment package” and acknowledged that clients frequently refused to accept similar payment packages, “but it’s worth trying.” Mr. Barrow did not recall any conversations with the Town about the payment schedule. He inserted the payment schedule into the contract, and no one from the Town tried to change it.

Mr. Houghton did not make any attempt to negotiate a different payment schedule. He testified that he consulted the deputy mayor about the payment schedule, explaining that Rick Lloyd was the “chair of finance” and he had “some pretty significant construction background.” Mr. Houghton also said he told the deputy mayor that BLT needed a substantial first deposit to be able to order “the ice plant and the Zamboni and the ... Sprung facilities, et cetera, et cetera, and that’s 25 percent”; and that the 25 percent draw would enable BLT to “get going on the actual design work, the ... the architectural work and the engineering and those kinds of things.” Mr. Houghton initially testified that he obtained this information from Ms. Stec, but he subsequently acknowledged she did not tell him that the first 25 percent draw was needed to cover the ice plant or the Zamboni, stating that those things “just made sense” to him. He also testified that he and the deputy mayor agreed the payment schedule was appropriate, explaining that “the 25 percent upfront made sense for that ... because they’re going to have to order some of the longer-term products, including the ... Sprung building.”

Rick Lloyd testified that he did not recall discussing the payment schedule, or even being aware of the payment schedule, before the contract was signed. When asked if he was surprised or disappointed that the Town did not seek to

negotiate the schedule, Mr. Lloyd insisted he did not know whether staff had asked for a different payment schedule – even after being advised that BLT’s Dave Barrow had testified that the Town did no such thing. Elsewhere in his testimony, Mr. Lloyd testified that he was not surprised that no one from the Town tried to negotiate a different payment schedule.

Mr. Houghton’s reasoning for accepting the payment schedule was faulty. Mr. Houghton never inquired about when BLT needed to pay the full purchase price of the Sprung structure or other larger components. Mr. Barrow and Tom Lloyd testified that BLT was required to pay only 50 percent of the cost on order, and then the remaining 50 percent on delivery. Based on Tom Lloyd’s evidence, BLT would have been required to pay Sprung approximately \$1.7 million plus HST around October 4, 2012. By that date, the Town had paid BLT \$3,099,725.24, and BLT had paid Green Leaf \$756,740.42 (including HST)

Mr. Houghton told the Inquiry that, when he discussed the payment schedule with the deputy mayor, he didn’t know BLT was required to pay only 50 percent of the cost of the Sprung buildings upon order. Mr. Houghton also sought to rely on Ms. Leonard’s review of the contract in defence of his decision to accept BLT’s proposed payment schedule simply. Ms. Leonard testified that she believed the 25 percent was “a little high,” but assumed BLT was required to purchase the structures from Sprung. She told the Inquiry that she was “a little taken aback” in terms of the balance of the payment schedule, explaining: “Normally, we would do it on a percentage of completion basis for that type of deal.”

Rick Lloyd testified that he was “depending on the lawyer and the Treasurer” to have raised any issues with the payment schedule. Ms. Leonard said she relied on the fact that the Town’s lawyers did not raise any concerns about the contract. Mr. Houghton also sought to rely on the purported legal review of the contract as cover. As I discuss below, only Mr. Houghton knew, however, that the contract had not been subjected to any meaningful legal review before he arranged for the Town to sign documents.

The payment schedule was so unfair to the Town that BLT ultimately agreed to amend it, months after the contract was signed.

On December 5, 2012, BLT invoiced the Town for the second quarter of the construction contract amount according to the payment schedule. The Town paid BLT later that month.

On January 24, 2013, Ron Martin emailed the Town's manager of engineering services, Brian MacDonald, indicating he and BLT project manager Paul Waddell had been "discussing the site work at the pool and arena and would appreciate your thoughts and comments on how to best complete the work." Mr. Martin further noted that "BLT has agreed to work with us to complete the work as efficiently as possible."

The next day, Mr. Barrow emailed Mr. Waddell asking him to forward a new billing schedule to the Town of Collingwood. Two minutes later, Mr. Waddell emailed a revised billing schedule to Mr. Martin, stating:

Further to our conversation regarding the current contract payment structure, I have reviewed it with Dave and Mark and we hereby suggest we amend the contract with you to reflect a billing that would divide the current remainder of the contact [sic] into 5 equal payments rather than maintain the current payment structure.

The current contract, while more favorable to BLT at this point in the billing cycle is not in keeping with the spirit of our relationship with the Town and slightly outside the boundaries of common sense and common practice [emphasis added].

Although this is a unique design build contract and was well intended at the time of writing I'm sure, we'd still prefer it to be fair in nature to both parties involved.

[...]

Please review and advise if you fell [sic] this is an acceptable proposal in the interim.

Mr. Martin forwarded the new schedule to Mr. Houghton and Ms. Leonard, asking for their thoughts. Mr. Martin also stated: "I am personally much more comfortable with the restructured payment schedule and believe that it more accurately represents actual work being completed each month."

Mr. Houghton and Ms. Leonard responded, indicating the new payment schedule was acceptable. Mr. Martin replied, stating he would "contact BLT and let them know that we agree and will proceed on this basis for the duration of the two projects."

Mr. Martin, Mr. Houghton, and Mr. Barrow all testified that the payment schedule was changed as a result of a proposal by Mr. Martin.

Mr. Martin testified that prior to this email exchange, he had asked Mr. Houghton and BLT about changing the payment schedule so that payments would be more closely tied to construction work completed. Mr. Martin believed BLT ultimately agreed to his revised schedule because it recognized that the initial schedule had been favourable to BLT and that Mr. Martin's proposed schedule "was a pretty standard process." Mr. Martin felt that a payment schedule under which payments reflected work completed was more fair to the Town than the schedule previously agreed to.

Mr. Barrow testified that BLT agreed to the change because, "[a]t that point, we were much more comfortable with ... the Town." He disagreed with Mr. Waddell's assessment in the email above that the initial payment schedule was more favourable to BLT, arguing that BLT needed payments upfront to pay for certain construction costs and that it would be preferable for BLT to pay for them with money received from the Town. Mr. Barrow also said that Mr. Waddell's statement in the email that the payment schedule was not common practice referred to the fact that it was relatively aggressive.

I am satisfied that Mr. Martin proposed the revised payment schedule to BLT in an attempt to rectify the Town's position after it had been left vulnerable by the initial payment schedule. As I discussed above, the initial schedule was proposed by BLT and accepted by Mr. Houghton without any attempt to negotiate.

Legal Advice

Mr. Houghton forwarded the draft contract to lawyer John Mascarini of Aird & Berlis at 10:26 a.m. on August 30, 2012 shortly after receiving it from Mr. Barrow. In his covering email, Mr. Houghton wrote:

Please find attached the agreement that we discussed this morning. I appreciate that you have agreed to take the time to review. In looking at the agreement, it appears to be a "standard" construction document.

Mr. Houghton did not ask for any specific advice or pose any questions in his covering email. He testified that he asked Mr. Mascarin to “review the agreement, see if it was appropriate.”

Immediately after sending the contract to Mr. Mascarin, Mr. Houghton emailed Ms. Leonard and Deputy Mayor Lloyd, advising: “I just got the agreement and the 25 percent up front draw amounts to \$3,099,725.24. The cheque will be made out to B.L.T. Construction Services Ltd.” Mr. Houghton noted that he had sent the contract to Mr. Mascarin for review, “but it is “off the shelf” Construction Agreement.”

Mr. Mascarin responded to Mr. Houghton less than three hours after receiving the 46-page contract. He began his email by advising he had “not reviewed any of the background to this proposed construction nor any of the Contract Documents referred to within the agreement.” He went on to explain that “the work is to be undertaken in accordance with all the various underlying contractual agreements and specifications which I assume have been fully canvassed and agreed to by the Town,” and concluded:

Assuming that the Mayor has been authorized by Council to execute the agreement (I note there is only space for one signature by the Town) the agreement is generally satisfactory and does not appear to have been modified by an [sic] substantive amendments or riders apart from the attachment of the budget and timeline schedules.

Mr. Houghton testified that he was not sure if he had understood Mr. Mascarin’s reference to “all the various underlying contractual agreements and specifications” that Mr. Mascarin assumed had been “fully canvassed and agreed to by the Town.” Mr. Houghton said he did not know what the “Contract Documents referred to within the agreement” were, explaining:

–[I]sn’t there additional things that need to be attached to the contract? Like, I sent him the contract. For him to say that he’s not reviewed the – nor any of the contract documents, isn’t that what I’m sending him as the – sort of the contract?

So I'm assuming what he's talking about is other things that might be standard within the same kind of – I don't know.

Despite his confusion about Mr. Mascarin's message, Mr. Houghton did not have any discussions with the lawyer after receiving his email. Mr. Houghton agreed with his counsel's suggestion that Mr. Mascarin "in essence" provided him with "a go-ahead to use [the contract]."

A plain reading of Mr. Mascarin's email shows that he did not provide Mr. Houghton with "a go-ahead." To the contrary, Mr. Mascarin clearly identified that he had not considered the following important factors: the context in which the contract was formed; the documents referred to in the contract; and whether the matters referred to had been previously explained and agreed to by the Town.

Mr. Houghton testified that he did not forward Mr. Mascarin's correspondence to anyone. He said that he discussed the correspondence with Deputy Mayor Lloyd and thought he read it aloud to Ms. Leonard, explaining: "I think I probably said, here's what John is saying, blah, blah, blah, in these different areas. I think I did that."

It does not appear Mr. Houghton advised the deputy mayor or the treasurer about the caveats Mr. Mascarin placed on his review of the contract. Ms. Leonard testified she understood Mr. Houghton sent the contract to Mr. Mascarin. She said she did not recall if Mr. Mascarin noted anything out of the ordinary. The deputy mayor agreed with a suggestion from Mr. Houghton's counsel that "it was obvious" Mr. Houghton had sent the contract, including the payment schedule, to Mr. Mascarin for review.

Signing of Contract

Treasurer Marjory Leonard and Mayor Sandra Cooper signed the construction contract on behalf of the Town on August 30, 2012.

Ms. Cooper testified that she did not review the contract before she signed it. She said Ms. Leonard and "the Town solicitor" had reviewed the contract, although she could not recall which of the Town's solicitors – John Mascarin or Leo Longo – had completed the review.

Ms. Leonard testified that, although she briefly looked over the contract before she signed it, no one explained to her what the contract provided for. She said she was not normally the person who signed the contracts. Ms. Almas gave evidence that Ms. Leonard signed the contract because Ms. Almas, who would normally have done so, was away from the office that day.

Deputy Mayor Lloyd agreed with suggestions from Mr. Houghton's counsel that he met with the mayor on August 30 to discuss the contract and its particulars, including the first draw. He testified that he could not recall the details of the meeting, whether Ms. Leonard attended the meeting, whether he signed the contract, or if he witnessed the contract being signed.

Mr. Houghton testified that Mayor Cooper had told him she met with the deputy mayor and Ms. Leonard to review the contract and payment schedule. Ms. Cooper testified prior to Mr. Houghton. Mr. Houghton's counsel did not raise this conversation with Ms. Cooper when questioning her.

I am satisfied that there was no meaningful review of the contract terms from the Town's perspective. I can understand why Ms. Cooper and Ms. Leonard relied on the fact that the Town solicitor had reviewed the contract without raising issues. Unfortunately, Mr. Houghton did not inform them that Mr. Mascarin's review was limited.

Within 72 hours of Council's decision to approve the Sprung recreational facilities, a 46-page construction contract for in excess of \$12 million between the Town and BLT was drafted and signed. Important elements of the contract that affected the Town's interests were drafted by BLT and went uncontested by Mr. Houghton.

The Inquiry did not hear a convincing reason for the speed at which the contract was drafted and executed. Mr. Houghton testified that he understood Council wanted to move quickly. I reject his evidence in this regard because it defies common sense.

Mr. Houghton denied that his decisions were motivated by a desire to ensure that his friend, Mr. Bonwick, received his payment and received as much as possible. Regardless of Mr. Houghton's intention, the way he behaved helped make it possible for Mr. Bonwick's company, Green Leaf, to receive \$756,740.42 from BLT within four days of Council's vote and before any steps were taken toward the construction of the recreational facilities.

Payments to BLT, to Green Leaf

A remarkable series of events took place on August 30. As I described above, the day began with Mr. Bonwick directing Mr. Barrow to send Mr. Houghton the contract and BLT's invoice for the first instalment, explaining that the Town "will try to have the cheque ready if they get it in the next little while." By the end of the day, Treasurer Leonard and Mayor Cooper had signed a contract with BLT on behalf of the Town and the Town issued its first payment to BLT in the amount of \$3,099,725.24.

At the hearings, Mr. Bonwick explained he was trying to facilitate a prompt payment for two reasons. First, in his experience, it is a "much firmer deal once you have a deposit." Second, he said, "I suspect, to some degree, I want them to take care of Green Leaf as – as expeditiously as possible." He confirmed that this comment meant he wanted BLT to get paid so Green Leaf could be paid.

Accordingly, while Mr. Houghton worked to have the contract signed on August 30, Mr. Bonwick took steps to ensure that BLT paid Green Leaf the success fee as soon as the Town paid BLT. At 8:31 a.m., Ms. Stec sent Mr. Bonwick Green Leaf's invoice to BLT for the \$756,740.42 (including HST) success fee. Mr. Bonwick forwarded the invoice to Mr. Barrow at BLT at 9:14 a.m., writing:

Please review Abby's invoicing for approval. I would suggest, subject to your approval that you have a cheque prepared and bring with you for payment. If Collingwood has your draw than [sic] you can provide Green Leaf the payment. If Town cheque is not ready, just keep Green Leaf cheque until you receive yours.

Please let me know if this is an [sic] reasonable approach.

Dave Barrow replied to Paul Bonwick's email at 9:41 that morning, writing: "No problem please allow a few banking days for ours to clear." Mr. Bonwick replied: "Please call my cell regarding that request." Mr. Bonwick did not recall speaking with Mr. Barrow, but confirmed that, at this time, his interest was to get Green Leaf's fee paid as soon as possible.

At 6:03 p.m. on August 30, Dave Barrow emailed Paul Bonwick: “Paul I need that info for transfer.” The next day, BLT wired Green Leaf the \$756,740.42 success fee (which included HST).

Green Leaf Invoices

Green Leaf prepared two invoices for BLT. Both were dated August 30, 2012, labelled “Invoice 100” and “Project 101,” and both referenced “the agreement between BLT Construction Services Inc. and Green Leaf Distribution Inc. dated August 27, 2012.” One invoice set out fees for services (\$199,226.76 for the pool, \$470,455.03 for the arena, and \$87,058.63 in HST) totalling \$756,740.42. The other invoice set out fees for service for “LEED™ Consulting, Project Management” totalling \$756,740.42 (including HST).

Mr. Bonwick testified that only one invoice was sent to BLT. He explained that Ms. Stec initially created an invoice that included LEED consulting and project management. Mr. Bonwick testified that, after reviewing the LEED invoice, he was “sort of concerned about suggesting that LEED’s consulting represented a significant portion of the invoice, rather make it more generic, which is historically how I handled my billings.” He asked Ms. Stec to create a new invoice, which was then sent to BLT.

Ms. Stec testified that she prepared two invoices because she was not sure “how Mr. Bonwick wanted it to read.” She did not recall why the one invoice referenced LEED consulting, but confirmed that Green Leaf had not done any LEED consulting work for BLT at this point in time. She did not recall whether one or both invoices were sent to BLT.

Mr. Barrow confirmed that Green Leaf sent only one invoice, which did not reference LEED consulting.

Distribution of Green Leaf Proceeds

Ms. Stec testified that, after Green Leaf received the payment, Mr. Bonwick offered her 20 percent of the proceeds, proportional to her ownership of the business.

Ms. Stec said she declined the money, testifying that the payment was for Mr. Bonwick’s work under the intermediary agreement, not for any LEED

consulting. She described the amount as a “performance fee” for “providing the sole source, which I didn’t feel that should have gone through Green Leaf.” Ms. Stec also testified that she was uncomfortable, in part, because she was “blown away” by how fast the deal happened.

At the hearings, when Mr. Bonwick was asked whether the payment was a substantial amount of money for a month’s work, he testified no, explaining: “I think one has to reflect on the value that Green Leaf brings to the table and, more specifically, myself” referencing his investment in his network of relationships, “throughout Simcoe County, the province, the Federal Government.”

Mr. Bonwick did not agree with Mr. Houghton that the Sprung buildings would not have been built without Green Leaf’s involvement, remarking that “he’d like to justify my own existence and that of my company.”

Use of Green Leaf Funds

When BLT paid the \$756,740.42 success fee on August 31, Green Leaf had \$5,672 in its bank account. Green Leaf’s financial records show that, between August 31 and December 31, 2012, Green Leaf used the funds from the Green Leaf account to pay:

- Compenso:† a total of \$281,486;
- Mr. Bonwick personally: a total of \$41,679;
- Ms. Stec’s consulting company: a total of \$27,505;
- an HST remittance: \$54,303; and
- a variety of payments, each of which was less than \$45,000.

At the beginning of 2013, Green Leaf had \$311,948 remaining in its account. Throughout the year, Green Leaf received a total of \$68,016 in additional deposits from a variety of sources, including a \$20,075 payment from BLT for a LEED consulting report for the Sprung arena and pool. In addition to those deposits, Green Leaf took out a \$250,000 GIC. However, all

* Mr. Bonwick’s communications company.

but \$10,000 was withdrawn from the GIC that year. Green Leaf also loaned Georgian Manor Resort \$140,000 and received \$140,000 in payments. Mr. Bonwick testified that Green Leaf loaned the money to help the business through a financing situation.

By the end of the year, Green Leaf had a negative balance of \$7,696. Green Leaf used the funds in its account in 2013 to pay

- Compenso: a total of \$64,046;
- Abby Stec and her consulting company: a total of \$93,829; and
- A variety of other payments, each of which was less than \$45,000.

Mr. Bonwick testified that \$40,000 of the amounts paid to Compenso was to repay a loan he claimed he had provided to the company, but he did not recall the purpose of the other payments. He said he believed Green Leaf paid Compenso \$6,102 a month either for consulting fees on another project or for rent and additional costs. He could not recall.

Green Leaf's financial records state that the amounts paid to Mr. Bonwick personally in 2012 were for a dividend (\$25,000), and the remainder for expense reimbursements (\$16,679).

Ms. Stec testified that the amounts paid to her consulting company were for her salary and expenses.

Conclusion

In the short period between Council's approval of the Sprung structures and the signing of the construction contract, Mr. Houghton made several key decisions and failed to negotiate elements of the contract. Mr. Houghton sent the contract to Town solicitor John Mascarin for review but, as Mr. Mascarin explained to Mr. Houghton, his review was limited. Mr. Houghton's choices were to the Town's detriment, as the Town signed a contract that hadn't been negotiated and with terms that failed to protect the Town's interests. Meanwhile, BLT and Green Leaf benefited from the speed with which the contract was drafted and signed, as BLT collected a substantial deposit and Green Leaf was paid its commission.

The Sprung / BLT Selection Process: Questions and Fallout

All was not quiet after the August 27, 2012, Council meeting. Within a week, Council and staff faced numerous questions about the decision to sole source two Sprung recreational facilities. The questions probed the flaws in the staff report and whether Paul Bonwick benefited from Council's decision. Responding to the questions taxed staff, particularly the clerk, Sara Almas. As part of the process, staff gathered information that was not provided to Council before voting, including a list of fabric building competitors that may have been eligible to participate in a competitive procurement. Acting Chief Administrative Officer (CAO) Ed Houghton also asked Dave McNalty, manager of fleet, facilities and purchasing, to prepare a memo criticizing the report of WGD Architects Inc.

The efforts to explain staff's sole source recommendation did not alleviate the perception of mischief. Mr. Houghton and Deputy Mayor Rick Lloyd denied Mr. Bonwick's involvement, despite knowing he worked for BLT Construction Services Inc. Mayor Sandra Cooper failed to make any inquiries into the rumours surrounding her brother, Mr. Bonwick. The questions persisted, in particular those relating to Mr. Bonwick, after the CBC reported in March 2013 that the Ontario Provincial Police (OPP) were investigating his role in other Town business.

In April 2013, Mr. Houghton stepped down as acting CAO.

Questions to Council and Staff

In the weeks following the August 27 Council meeting, stakeholders asked questions of Council and staff regarding the process that led to the approval

of the Sprung structures. Some sought clarity on staff's process by writing open letters and asking questions at Council meetings while others submitted formal document requests to staff. Many of these questions reflected the same concerns regarding the staff report that I discuss in Part Two, Chapter 11. In some instances, the answers provided to these questions were inaccurate or misleading.

As the Town's clerk, Ms. Almas was responsible for fielding and responding to information requests from residents. She testified that there was a high level of concern among Town residents regarding the decision and, as a result, she received a "pretty significant" number of information requests pertaining to the Sprung structures. She noted that responding to these requests was overwhelming at times. Ms. Almas withdrew from the Executive Management Committee (EMC) in May 2013, as I discuss below.

From the PRCAC

On August 28, 2012, Marta Proctor, director of parks, recreation and culture, sent an email to members of the Town's Parks, Recreation and Culture Advisory Committee (PRCAC), and Central Park Steering Committee advising them that Council had approved the Sprung facilities. One member of the PRCAC, Dr. Geoff Moran, responded to the email expressing his disappointment in Council's decision. He criticized the Town's failure to use a competitive procurement process, consult with the public, or commission engineering assessments before approving the Sprung facilities and expressed concerns over the durability of Centennial Pool.

Shortly thereafter, Dr. Moran sent Ms. Proctor a second email, asking several questions regarding recreational facilities, including:

What process lead [sic] council to this decision?

Why is there suddenly such a great urgency?

What is the cost of each facility? How does the town plan to finance these costs and what contingency is built in?

Have any studies been done on the outdoor pool as to the ability to enclose it and its general condition?

What will be the annual, ongoing costs of operating [the Sprung arena, the Sprung aquatics facility, and the Eddie Bush Arena]?

How did this Sprung company approach the town or the town find them?

Have other similar companies been asked to quote on these projects?

What is the longevity of these structures? Can you add on to these buildings in the future?

Dr. Moran asked reasonable questions. As I discuss in Part Two, Chapter 11, the answers to some of these questions were included in earlier drafts of the August 27 staff report and then removed before the report was finalized.

Ms. Proctor forwarded Dr. Moran's email to Mr. Houghton, asking for suggestions on how to respond. Mr. Houghton advised Ms. Proctor to hold off and stated that,

Council (at least some) are not happy that the Committee members continue to hammer them on a decision that has been made. These comments are very much reflecting on us and we need to try and manage this some way some how.

Ms. Proctor responded to Dr. Moran on September 5, asking him if he would like to meet with Mr. Houghton, Mayor Cooper, and herself. A meeting was set for September 11.

After the meeting, Mayor Cooper sent a summary to Council, indicating the meeting "was very positive as [Dr. Moran] was appreciative of information provided." She also noted that a PRCAC meeting had recently taken place and that she, Deputy Mayor Lloyd, Mr. Houghton, Ms. Leonard, and Ms. Proctor had attended. She described the meeting as "informative for those present. There was frank discussion with questions from their members which were answered honestly." Mr. Houghton kept Mr. Bonwick apprised of these developments, forwarding the mayor's update to Mr. Bonwick and writing, "ugh!" Mr. Bonwick responded, "remember ... lol."

From a Local Engineer

On August 29, 2012, Dan Barill, an engineer working in Collingwood, sent an email to Deputy Mayor Lloyd questioning the staff report's estimate for a pre-engineered steel facility. He stated: "In my opinion, Mr. Houghton's estimated construction cost for a single pad arena (\$11,100,000–\$12,300,000 + additional \$1,000,000 for a second-floor lounge area) is high." He added that his company had submitted a single-pad arena proposal to the Town of Listowel for \$9,998,000 and that the Town of Clinton had built a single-pad arena for \$8.5 million. Mr. Barill was correct. The pre-engineered steel arena estimate was high, inflated by at least \$3.9 million (see Part Two, Chapter 11).

The deputy mayor forwarded the email to Mr. Houghton, who responded: "The estimates came from the architects that the Steering Committee used but he misread the \$1M for the mezzanine. That was already in the cost." Soon after, the deputy mayor replied to Mr. Barill, stating: "[T]he estimate that you refer to came right out of the CENTRAL PARK STEERING COMMITTEE but I think you misread the \$1 million for the Mezzanine as that is already in the total cost."

The information Mr. Houghton provided to the deputy mayor in response to Mr. Barill's email was misleading in two respects. First, the staff report's estimates for a pre-engineered steel arena were not created by the architects used by the Steering Committee (WGD) or the Steering Committee itself. They were modified versions of WGD's budgets created by Mr. McNalty at Mr. Houghton's direction.

Second, Mr. Barill's perception that a pre-engineered steel arena mezzanine would cost an additional \$1 million was not a result of "misreading" the report. As I describe in Part Two, Chapter 11, the staff report stated that the mezzanine would cost an extra \$1 million and at no point indicated that this amount was included in the pre-engineered steel arena estimate. Mr. Houghton confirmed in his evidence that this portion of the report was an error.

From Ameresco

On August 30, Frank Miceli of Ameresco Canada Inc., sent a letter to Mayor Cooper, copying all Council members, regarding the August 27 Council meeting. In the letter, Mr. Miceli stated:

We were extremely surprised to see that ... [w]hat was previously described as a comprehensive solution with a community centred facility seemed to morph into a fragmented solution to get a roof over an existing swimming pool and an additional ice pad.

The process then seemed to go off onto another tangent whereby the only acceptable solution was to have a fabric covered structure over both the pool and the arena ...

If these divergences from the original plan were not enough, a formal procurement process seemed to be entirely abandoned in favour of a rapid award to a single supplier of a fabric covered structure.

Mr. Miceli concluded his letter by asking Mayor Cooper several questions, including:

If the scope of work changed from a multi use recreational facility to a single pad arena and a roof over an existing pool why was a Request for Proposals not prepared and issued to solicit these solutions from the marketplace?

When asked during the hearings why staff did not issue a request for proposal (RFP) once the Town shifted its focus from a multi-use facility to a single-pad arena and pool cover, Mr. Houghton answered that Council had expressed an urgent need for a new arena and aquatics facility.

As I discuss in Part Two, Chapter 10, Council had sufficient time to conduct a competitive procurement process for new facilities before the end of its term. Furthermore, the staff report that Mr. Houghton oversaw recommended sole sourcing the Sprung facilities on the basis that they were unique, not that there was an urgent need that justified foregoing a competitive procurement.

When asked whether, in hindsight, it would have been preferable to conduct an RFP before making a final decision regarding recreational facilities, Mr. Houghton stated: "I agree. I – I think there's a few things that I would, if I was looking back – what I would be making suggestions of how to move forward in a – in a new way in 2019."

Mr. Miceli's concerns are indicative of how the flaws in the process of

writing the staff report, described in Part Two, Chapter 11, undermined the public's confidence in Council's decision to approve the construction of the Sprung structures. The speed with which the decision was made and the absence of clarity on why a competitive procurement was abandoned left Mr. Miceli with the sense that staff's recommendation had been made in haste and without proper due diligence. Over the following months, these concerns would be expressed by other Town residents.

Mayor Cooper responded to Mr. Miceli's letter by email:

Hello, Mr. Miceli:

Thank you for your presentation.

The town has fulfilled all obligations.

From Councillor Hull

On September 10, 2012, Councillor Keith Hull submitted a list of 20 questions regarding the recreational facility procurement process to his fellow councillors. Mr. Houghton and the Executive Management Committee began drafting a memo responding to Councillor Hull's questions on September 13. Mr. Houghton oversaw the process. He revised the memo on September 14 and then again on September 17. The following are some notable answers.

In response to a question asking why a competitive procurement process had not been used to purchase the Sprung facilities, Mr. Houghton stated:

The technology being used for the new recreation facilities is the patented Sprung technology, which is unlike any other on the market to date. To the best of our knowledge through considerable review, Sprung is the only technology that has not experienced a collapse. The buildings are considered 60 year structures, with a 20 year guarantee on the membrane and 30 year guarantee on the structure itself. This far exceeds all other guarantees. In fact many standard roof types have less than a 20 year guarantee.

Sprung was advised that they were in a competitive process, competing against traditional methods and construction practices.

Further, they were advised that the traditional methods would be favoured.

As I discuss in Part Two, Chapter 11, Sprung Instant Structures Ltd. was not advised that it was participating in a meaningful competition with any other construction types. Further, Mr. McNalty, Ms. Almas, Ms. Leonard, and Mr. Houghton all provided evidence that it was inaccurate to describe Sprung as having participated in a competitive process.

There was no evidence that Sprung was told that the Town would favour traditional construction methods in its search for new recreational facilities. To the contrary, Sprung's Tom Lloyd testified that he had been told "many times" by Town representatives that a pre-engineered steel arena was not the Town's preferred option.

Councillor Hull also asked whether the decision to purchase the Sprung structures adhered to the Town's procurement policy. The memo did not directly answer the question, stating:

The Town's Procurement Policy is developed to ensure that all purchases are performed in a fair and financially responsible manner. There are times when certain technologies (such as pumps, chlorinators, etc.) are leading edge, one of a kind, or most appropriate for certain types of situations or applications. When purchasing such technologies, one must always practice good judgment and professionalism. This was demonstrated by the Treasurer, Marjory Leonard.

As I discuss in Part Two, Chapter 10, the decision to have the report recommend a sole-source procurement of the Sprung structures was made by Mr. Houghton, not Ms. Leonard.

Councillor Hull's final question was whether the staff report's recommendation was unanimous. The memo responded:

Input and consultation was received from Members of Council, Ed Houghton, Acting CAO; Sara Almas, Clerk; Marta Proctor, Director of Parks, Recreation and Culture; Larry Irwin, Director of Information Technology; Marjory Leonard, Treasurer; Dave McNalty, Manager of Fleet

Facilities and Purchasing; and Dennis Seymour, Manager of Recreation Facilities. Staff worked diligently to meet the requirements on the direction of Council and did so in a professional manner. At no time did any member say they were not in favour of any portion of the direction given, even when directly asked.

This response understated Mr. Houghton's role in overseeing the report's direction and overstated the influence of other staff members.

Treasurer Leonard responded to Mr. Houghton's draft of the memo, stating, "sounds good to me," while Mayor Cooper responded thanking Mr. Houghton and the EMC for their work on the memo.

The next day, Councillor Hull sent an email to Mr. Houghton and the EMC indicating the mayor had provided him with a copy of the memo and stating that "[t]he majority of my questions have been satisfactorily answered. Others we will simply have to agree to disagree and move forward."

Paul Cadieux's Document Request

On August 30, 2012, Friends of Central Park member Paul Cadieux sent Clerk Almas a letter on behalf of the group requesting documents related to the Sprung structures. Ms. Almas spent the next month working with other staff to gather the requested information.

As part of this process, Mr. McNalty prepared a spreadsheet showing how WGD's original \$7.6 million estimate for a pre-engineered steel arena was adjusted to \$12.3 million, the high end of the price range for a pre-engineered steel arena in the August 27 staff report. Mr. McNalty testified that, while he discussed some of his adjustments with the EMC during the drafting process, he prepared a new version of his spreadsheet specifically to respond to Mr. Cadieux's request.

Mr. McNalty's spreadsheet included a breakdown of how he prepared the estimate for the second-floor mezzanine, which involved taking items from both WGD's estimate and BLT's budget (see Part Two, Chapter 11). When Mr. McNalty sent the spreadsheet to Ms. Almas on September 13, he wrote that "we may or may not want to remove" the mezzanine breakdown. Mr. McNalty testified that he did not believe the breakdown contained

sensitive information; rather he was unsure if it was more information than required to answer Mr. Cadieux.

Ms. Almas forwarded Mr. McNalty's email to Mr. Houghton on September 20. Mr. Houghton replied: "I have no issue sending the first part and excluding the second part. I'm not sure exactly what that is but if Dave has mentioned possibly not sending maybe we should."

The version sent to Mr. Cadieux included a breakdown of the second-floor mezzanine estimate but removed the information about which items were taken from WGD's estimate and which items were taken from BLT's budget.

In preparing a response, Mr. Houghton also changed the explanation of why the green initiatives (which were listed as "recommended upgrades") had been added to WGD's estimate for pre-engineered steel in the staff report. Mr. McNalty originally wrote that recommended upgrades were "[a]s may be required for LEED Silver certification level." Mr. Houghton directed Mr. McNalty to change this to: "As may be required for LEED Silver certification level similar to Sprung Membrane Building." This statement was inaccurate. The Sprung structures were not eligible for LEED silver certification without additional features, work, and costs (see Part Two, Chapter 11).

In the process of responding to Mr. Cadieux, Mr. McNalty also created a chart comparing the costs of the Steering Committee's multi-use facility, a pre-engineered steel arena, and a fabric membrane arena. Mr. McNalty noted that the chart might respond to "the follow up request from Cadieux for the comparison template."

After receiving the chart, Mr. Houghton wrote: "I think what Cadieux is asking for is the matrix that looks at other fabric buildings in comparison to Sprung." Ms. Almas responded, asking: "Do we have a matrix that compared other fabric structures? Did you do this Marjory?" Mr. McNalty responded: "I never made anything for this comparison because I never found anything to compare to – even on the basis of R-Value alone."*

Ms. Almas sent Mr. Cadieux a formal response to his requests on September 22:

* As noted in Part Two, Chapter 7, a building's insulation is measured by "R" value. A building with a higher R value is better insulated.

I appreciate your patience – since we had numerous staff working together and with my unexpected time away from the office – I have now compiled the information requested.

I trust everything requested is attached, and a few extra items we had that may be beneficial in your review. The one item missing is the handwritten detailed matrix, as it is with Ed's files he kept for his discussions with various concerned stakeholders. I have contacted Ed (and copied him on the attached), and he has confirmed that he will provide once he is back in the office early next week. I am just awaiting confirmation on the release of the Sprung Contract – and will have that additional information to you this week.

The operating information and calculations for the year-round pool were based on industry standards and data that was provided by our Parks, Recreation and Culture Director.

The Inquiry did not receive a copy of the “handwritten matrix,” nor did it hear any evidence that Mr. Houghton provided this document to Mr. Cadieux or anyone else.

Ms. Almas recalled seeing the document but could not recall its contents and could not recall whether it was ultimately provided to Mr. Cadieux. She testified that Mr. Houghton or Mr. McNalty likely created the document. When asked about the handwritten matrix, Mr. Houghton stated:

I probably just had something that I had received along the way that had different fabric companies on it. And I – I probably had that in the – the office downstairs. I don't have a specific memory of it ...

Mr. Houghton also acknowledged that staff had not documented the results of its research into other fabric membrane suppliers until after the publication of the staff report:

I think that when we were doing our internet searches we were seeing that there was really only one (1) kind of fabric building that would – would be Sprung and there was other – many other commercial or agricultural type fabric buildings, and they – you know, you can see where they had

collapses and things. But I don't think we actually put it down in, you know, sort of a comprehensive package.

After receiving Ms. Almas's email, Mr. Cadieux thanked the clerk and asked when he would receive WGD's work in respect of the pool. Ms. Almas replied that WGD was not retained to review options for the pool because Council specifically directed staff to look at covering the outdoor pool with a fabric structure.

On September 24, Mr. Cadieux wrote to Ms. Almas:

I see that the construction contract that was signed by the Town is with BLT Construction Services Inc. While this is good to have, I was looking for the contract that was signed with Sprung. Can this be made available as well?

Mr. Houghton responded shortly afterward: "The agreement is with BLT who is the exclusive licensed installer of Sprung structures in Ontario and I believe eastern Canada." This response was inaccurate. As I have already discussed, BLT did not have the exclusive right to build Sprung structures in Ontario. Mr. Houghton was aware of this, as Tom Lloyd of Sprung had presented him with the option of having another company build the Sprung structures during a meeting on August 3.*

If the information that was provided to Mr. Cadieux had been made available to Council before August 27, Council would have had the opportunity to ask similar questions as Mr. Cadieux – for instance, why did WGD not look at the pool? Or, why is there another company listed on the contract? – before voting to proceed with two Sprung buildings.

The fact that Mr. Houghton directed the preparation of documents after members of the public began asking questions, and could not locate other important documents he said existed, risked creating the impression, whether true or not, that the rationale for recommending a sole-source procurement was tenuous, and needed to be bolstered after the fact.

* I discuss this meeting further in Part Two, Chapter 8.

Staff and Public Awareness of Competitors

Sprung's Competitors

On September 5, 2012, Abby Stec of Green Leaf Distribution Inc. sent an email to Tom Lloyd and David MacNeil of Sprung and Dave Barrow of BLT, stating:

There are several interest groups that are stirring the pot about the sole sourcing method we followed.

Can you please put some bullet points together that clearly indicate why Sprung is in a league of its own and that there is really no company to compare to it. It is very important that we put this to bed ASAP.

Mr. Barrow responded that he would send Ms. Stec “comparisons ... regarding other structures.” Later that day, Ms. Stec requested a conference call with David MacNeil, Tom Lloyd, Mark Watts (BLT’s president), Dave Barrow (BLT’s vice-president), and Paul Bonwick.

Mr. Houghton testified that Ms. Stec made this request on staff’s behalf. He stated that, although staff had done some internet research by this point on other fabric building suppliers, the results of this research had not been consolidated and documented. As a result, staff sought this information from Sprung.

On September 6, Tom Lloyd sent Mr. Houghton “a two page document which speaks to the local membrane competition.” The document listed “[t]he other major membrane players in Eastern Canada” (including MegaDome, Britespan Building Systems, and Calhoun Super Structure), described flaws in each of these company’s structures, and then described the advantages of Sprung structures.

Mr. Lloyd testified that he provided Mr. Houghton with this information because advocacy groups within the Town were questioning whether other local fabric structure suppliers were superior to Sprung. Mr. Lloyd also indicated in his email that he would “try to send a few other documents as well.”

On September 9, Ms. Stec sent Mr. Houghton promotional materials

for a Sprung fabric-covered pool in Kearns, Utah, as well as a document describing Sprung structures that had been erected in cold weather climates.

Three days later, Mr. Houghton emailed Tom Lloyd, stating: “The media is now saying there are other direct competitors. Please confirm this false [*sic*] ASAP.” Mr. Lloyd responded:

Not sure what the media is saying. Sprung is a patented technology and therefore NO other membrane competitor can come close to our product. They also can't come compete [*sic*] in the energy savings, environmental friendliness and LEED credits.

Mr. Houghton replied, thanking Mr. Lloyd and asking: “How many other membrane companies are there? Are there any that are insulated?” Mr. Lloyd replied:

[T]here are about 10 membrane manufacturers in Canada. Most are designed for farm buildings, household garages and small cold storage buildings. NONE insulate from the manufacturer. If they say they do it's an aftermarket addition that is installed by their resellers. None of their websites even mention insulation as an option.

During his testimony, Mr. Lloyd elaborated on this email. He stated that Sprung was the only fabric structure supplier that manufactured its fabric membrane with insulation built in. Other structures added insulation after the fact.

On September 17, Mr. Lloyd sent Mr. Houghton an email with the subject line, “Competition.” Although the document attached to the email was not provided to the Inquiry, the covering email indicates that the attachment contained a spreadsheet describing the traits of other fabric membrane structures. Mr. Lloyd wrote:

Here is a revised spread sheet. It's long so best to print on 11" x 17" paper. We have added the guarantee and membrane specs.

The competitors that sell membrane structures in Ontario are highlighted in red. To the best of our knowledge, and the folks we

hire for competitive info, none have an existing structure as wide as Collingwood requires.

Mr. Houghton responded, indicating he had some questions. In his reply, Mr. Lloyd wrote:

[There] is NO competitor to Sprung. Who else has proven existing insulated buildings? No one!! The town of Collingwood made a great decision and they will be proud and thankful of it for years to come!! 100 per percent CANADIAN!!

Resident Claims Competition

On September 21, Town resident Steve Berman published an open letter stating, among other things, that he had spoken with a company with an office in the county that offered a similar product and was not approached by the Town. His letter asked several questions and concluded: “We need to know why the town decided to sole source a contract worth millions of dollars of our money without our consultation.”

Mr. Houghton forwarded Mr. Berman’s letter to Mark Watts and Dave Barrow at BLT. Mr. Barrow, in turn, forwarded it to BLT project manager Paul Waddell and Tom Lloyd of Sprung. Mr. Waddell responded:

We had better cover ourselves very quickly and prepare to address the cost implications of abandoning ship.

We will obviously get Ed what he needs this weekend but ...

Read it over and over. As concrete as we can make our deal with the town, the reality is the town blew it in the eyes of the taxpayer. The second we release this contract the shit storm will become a hurricane.

The mayor had better meet with you and Ed at the same time. No way they can spin out of this.

During the hearings, Mr. Barrow could not recall the nature of the concerns Mr. Waddell expressed in his email. The email, however, speaks for itself.

Spreadsheet of Competitors

On September 24, Mark Watts sent Mr. Houghton a document entitled “Membrane Competition Spreadsheet”. The spreadsheet compared Sprung’s structures to those of seven other companies: Big Top, Calhoun Super Structures, Yeadon Air Supported Structures, MegaDome, Norseman (CMG Building Sales), Rubb, and Bright Span Structures. The spreadsheet compared each competitor’s experience constructing recreational facilities, insulation, construction materials used, delivery time, warranty periods, capacity to withstand wind, and whether independent engineers had reviewed the competitor’s structure.

Mr. Houghton testified that staff did not prepare anything akin to the membrane competition spreadsheet before the August 27 Council meeting. He further stated that the spreadsheet was created after the Council meeting but not by Town staff.

Tom Lloyd confirmed that Sprung prepared the spreadsheet. He recalled providing the spreadsheet to the Town before the August 27 Council meeting, however, he could not remember to whom he gave the spreadsheet. He acknowledged that several of Sprung’s competitors listed on the spreadsheet produced insulated fabric membrane structures. He agreed that Norseman, one of the competitors listed on the spreadsheet, built membrane structures in Ontario that could be used for recreational facilities and could attain the same level of insulation as a Sprung structure.

I am satisfied that Sprung did not provide the spreadsheet of competitors until after the August 27 Council meeting. None of Mr. Houghton, Ms. Almas, Mr. McNalty, or Ms. Leonard testified that they had access to such a spreadsheet when researching fabric membrane structures during the staff report drafting process. It was not in Sprung’s interest to identify its competitors to the Town. This highlights one of the benefits of competitive procurement: the market provides accurate information about available options.

The fact that Sprung could, on request, produce a spreadsheet identifying a series of potential competitors re-enforces that a sole source was inappropriate. Not only would a competitive procurement process attract bids from some of the competitors on the Sprung spreadsheet, it would also permit manufacturers of other types of buildings to bid on the arena and pool.

In this regard, Tom Lloyd testified that, before August 2012, Sprung had

participated in 40 to 50 competitive procurements. Mr. Lloyd explained that pre-engineered steel buildings were a “major competitor” in those procurements. He continued, noting that about three of the procurements were for arenas and one was for a pool and arena project in Nova Scotia.

Mr. Lloyd stated that all these procurements “went conventional,” meaning “there might have been some pre-engineered components to it, but it was mostly a bricks and mortar.” Mr. Lloyd testified that he did not know whether other fabric membrane manufacturers submitted proposals. In procurements for other facilities, Mr. Lloyd said, Sprung often bid against three other fabric building suppliers: Cover-All, Norseman, and MegaDome. He added that, if the decision was based primarily on price, “we would lose” because the competitors all offered a lower price.

Resident's Continued Questioning

Over the next few days, the Sprung membrane competition spreadsheet was forwarded to Mr. Berman. On September 28, Mr. Berman emailed Mr. Houghton, asking for contact information for representatives of Sprung and the seven other companies listed on the spreadsheet.

Mr. Houghton forwarded Mr. Berman’s email to Mayor Cooper and Deputy Mayor Lloyd, stating: “This is getting beyond ridiculous. When do we get to move on and not have to answer all of these questions? Every time we give them information, they use it against us and give me more work.” The questions that were causing Mr. Houghton concern, however, were rooted in the flawed staff report he oversaw that recommended bypassing a competitive procurement process in favour of Sprung. A request for proposal would have rendered many of Mr. Berman’s inquiries unnecessary.

Questions regarding staff’s research into Sprung’s competitors continued over the following months. Mr. Berman requested additional information regarding the Sprung transaction from Clerk Almas in November. In an email to Mr. Berman, Ms. Almas stated that “[Mr. Houghton] and Marjory [Leonard] have confirmed that the only information obtained by any of the other structure suppliers was strictly obtained from their websites.”

Ms. Almas noted that, as the staff report was being drafted, she understood that staff’s research had been broader than a review of suppliers’

websites. She recalled learning the true scope of staff's research around the time she was responding to Mr. Berman's questions and document requests. She testified that she was "disappointed that there wasn't more substantial due diligence undertaken." When asked why she was disappointed, Ms. Almas stated:

Just because this received – it was so controversial. Everything had happened. My workload increased. All this work was undertaken then to go back and then justify why that decision was made, when I thought that the information was already reviewed to justify the recommendation.

I understand Ms. Almas's disappointment.

Fallout

The damage done to the public trust by the staff report-writing process and the last-minute recommendations inserted in the report is apparent from the evidence I describe in this chapter.

After Council's vote, members of the public had questions about the propriety of a sole-source procurement and began advocating for transparency. The discovery that there were other suppliers justified their inquiries. Misleading information distributed under Mr. Houghton's supervision in response to their questions risked further fuelling public concern.

For example, Mr. Houghton testified that, when he distributed the membrane competition spreadsheet to members of the public, he did not indicate that the spreadsheet was the work of Sprung and BLT as opposed to Town staff. I accept that Mr. Houghton distributed the spreadsheet to the public without clarifying that Sprung was the source of that information.

When asked whether he informed the public that the spreadsheet was created after Council's decision and was thus not representative of the research staff had done prior to the August 27 Council meeting, Mr. Houghton disagreed with the premise of the question, stating:

It was a competitive spreadsheet that was indicative of the – the review that at least I had done for sure

[...]

[Y]ou said it's not indicative of the work staff had done. I don't – I don't agree with that ... it was indicative of what staff had determined in their review prior to August 27th.

If Mr. Houghton had indeed learned of Sprung's competitors before the August 27 Council meeting, he should have ensured that information was presented to Council. Instead, as I discuss in Part Two, Chapter 11, the staff report he oversaw advised Council that Sprung had no competitors. The late release of this information, after the Town had already contracted with BLT, undermined public confidence in Council's decision.

Denial of Mr. Bonwick's Involvement

As part of the backlash to the Sprung decision, certain residents in Collingwood began asking questions about Mr. Bonwick's involvement in the Sprung decision. Mr. Houghton and Deputy Mayor Lloyd denied Mr. Bonwick played a role, despite knowing otherwise. Mr. Houghton also prompted Tom Lloyd to deny that Mr. Bonwick had any relationship with Sprung.

Mayor Cooper, in contrast, elected not to ask her brother if the rumours were true, and instead allowed Councillor Ian Chadwick to assert they were not.

Mr. Houghton's Correspondence with Sprung

On September 7, Mr. Houghton emailed Tom Lloyd of Sprung, writing:

I have a sensitive and confidential question to ask you. Earlier today I heard a rumour that the Mayor's brother (Paul Bonwick) benefited from Council's decision to purchase from Sprung. Can you tell me if he has been paid by Sprung for his alleged involvement.

Mr. Lloyd responded that day, "There is absolutely no relationship

between Paul Bonwick and Sprung. There has being [*sic*] no payments of any type made to Paul Bonwick by Sprung.”

Ten days later, in response to an email from Collingwood resident Steve Berman, Mr. Lloyd advised: “Sprung has not or will not be paying any type of fee to insiders, or anyone in the Collingwood area.”

Mr. Houghton did not need to ask Mr. Lloyd about whether Mr. Bonwick benefited from Council’s decision to construct the Sprung facilities. Mr. Bonwick had already told him that his company, Green Leaf, had earned approximately \$675,000 from BLT as a result of the decision (as discussed in the previous chapter).

Mr. Houghton testified that he sent the September 7 question to Tom Lloyd because he heard that Mr. Bonwick “was also benefitting from Sprung” and he “wanted to make sure that it wasn’t a double-ender type thing.” When asked if it would have been a problem if Mr. Bonwick had been paid by Sprung, Mr. Houghton responded:

[I]f it was coming out of Sprung’s profit, not coming out of – out of Collingwood’s pockets, I’m not sure what the problem is, but I was hearing this and I needed to – needed to know or asked to know.

I do not accept Mr. Houghton’s explanation that he wanted to know if Sprung was also paying Mr. Bonwick.

If Mr. Houghton wanted to know this information, he would have asked Mr. Bonwick. The two men were in constant communication, and Mr. Bonwick had voluntarily disclosed not only the fact that he was working for BLT, but also the approximate amount he earned in doing so.

Further, up until he was cross-examined on this email exchange, Mr. Houghton had been quite adamant that he did not differentiate between Sprung and BLT. There was no reason why he would now be suddenly attuned to the fact they were different companies that may each be paying Mr. Bonwick separately.

I am satisfied that Mr. Houghton’s email was not a legitimate inquiry into whether Sprung paid Mr. Bonwick. Rather, Mr. Houghton emailed Tom Lloyd this question to have a paper trail of him investigating Mr. Bonwick’s involvement. Mr. Houghton understood that, by asking Mr. Lloyd the narrow

question of whether Sprung paid Mr. Bonwick, Mr. Lloyd could answer that Sprung did not, despite both men knowing BLT had paid Mr. Bonwick.

This approach is consistent with how Mr. Houghton handled other inquiries about Mr. Bonwick's involvement. As I discuss below, Mr. Houghton did not disclose to anyone at the Town that Mr. Bonwick worked for BLT. Instead, he withheld that information, which resulted in Town staff and members of Council unknowingly providing false and incomplete information to members of the public seeking information about Mr. Bonwick's involvement. The false and incomplete information left the impression Mr. Bonwick had not benefited from Council's decision to sole source the Sprung facilities.

At the hearings, Tom Lloyd defended his answer to Mr. Houghton's question as accurate, and said he didn't consider BLT's relationship with Mr. Bonwick when he answered Mr. Houghton's question. He testified that "something tells [me]" that Mr. Houghton called him before he sent Mr. Lloyd the email, but Mr. Lloyd could not "recall for sure." Mr. Houghton denied calling Tom Lloyd before sending his email query. He testified that he "never spoke to Mr. Lloyd about Mr. Bonwick working with BLT. I had nothing to do with any of that." Whether or not there was a call, I am satisfied that Mr. Lloyd provided an incomplete and inaccurate response to Mr. Houghton's email.

Deputy Mayor's Denial

On September 6, 2012, Councillor Dale West emailed the deputy mayor, writing: "Is there a connection with paul bonwick [*sic*] in this that I haven't heard about?"

The deputy mayor forwarded this email to Mr. Bonwick with the message "FYI." Mr. Bonwick responded: "Lol ... not that I am aware of ... I don't think he works in Town much anymore but I did hear that he was running for the liberals again."

Mr. Bonwick testified that his answer was an attempt at humour, and "when you're sharing those kinds of comic emails, you never anticipated them being read in the public forum seven years later." Later, Mr. Bonwick testified that, at the time he sent the email, he was under the impression that the deputy mayor already knew of his involvement in the Sprung transaction

(as I discuss further in Part Two, Chapter 12), and so he did not read the deputy mayor's "FYI" email as posing the question of whether or not Mr. Bonwick was connected to BLT or Sprung.

Deputy Mayor Lloyd responded to Councillor West twice, first writing, "No not that I know," then, later, "More bullshit." Councillor West responded, "Yep but it looks like that is the next thing we are about to hear." The deputy mayor replied:

Yes and I hear that the Liberals want him to run against Kellie!

...

This is laughable, I haven't seen Bonwick doing any work in Collingwood as I think he is out of the country most times.

Terry is more active in the area, I think he picked up after Bonwick

Maybe Terry and Mark are involved! Maybe Amerasco [sic] was just a cover up! Maybe they own controlling shares in SPRUNG Hehehehe

NOT!

Nasty small thinking people that didn't get their own way with Central Park so now they will do anything to discredit this council.

Deputy Mayor Lloyd testified that he did not ask Mr. Bonwick if he was working with Sprung or BLT on the Collingwood projects, explaining:

I didn't see any presence of him. Going back to what you said earlier, when it came to the Collus share sale, it was open and transparent he was involved. I just assumed he wasn't involved in this because I would have thought that had he been involved, it would have been the same thing, we would have known.

The deputy mayor also testified that he "never thought of" advising Councillor West that Mr. Bonwick had made a presentation with Sprung in nearby Wasaga Beach.*

As I stated in Part Two, Chapter 12, I am satisfied the deputy mayor was well aware that Mr. Bonwick was working with BLT on the Collingwood

* I discuss this presentation further in Part Two, Chapter 12.

recreational facilities. I am also satisfied the deputy mayor understood Mr. Bonwick's response did not accurately reflect his role

Accordingly, the deputy mayor's response to Councillor West was misleading. Setting aside Mr. Bonwick's role with BLT, the deputy mayor was also aware that Mr. Bonwick was doing work in Collingwood, with Power-Stream and other clients.*

Deputy Mayor's Continued Denial

Deputy Mayor Rick Lloyd was asked again about Paul Bonwick's involvement a week later. On September 13, he met with Collingwood resident Steve Berman to discuss public concerns about the arena and pool projects. The next day, Mr. Berman emailed Deputy Mayor Lloyd, thanking him for the meeting and posing a series of questions, including a request for a copy of the construction contract and the names of the other companies that Town staff researched. He also asked: "Will you tell me of any connection between council, staff and Sprung, including anyone who lobbied for Sprung? This way you can get rid of all the conspiracy theorists that think people are profiting from this. Yourself, Sandra, Paul Bonwick ect ect [*sic*] ..."

The next day, Mr. Berman followed up with the deputy mayor about these questions. Rick Lloyd forwarded both of Mr. Berman's emails to Mr. Houghton, writing "?" Mr. Houghton replied to the deputy mayor at 11:03 that morning:

Well we can give them the contract but quite frankly it has nothing to do with them.

We can give them many names of other companies.

No relationship with Sprung.

...

Your choice ... Maybe he can answer if he has a conflict with his wife being a Y employee. His conflict for using this as a kick off for a Council position. Does he have other conflicts. Will he be responsible for libelous comments such as a private citizen being named in his email. Etc. Etc.

* I discuss this further in Part One, Chapter 6.

The deputy mayor responded, “I agree.”

Deputy Mayor Lloyd testified that he did not ask Mr. Bonwick about whether he was involved in the projects because he was sure Mr. Bonwick was not involved, stating: “Again, had he been involved, it wouldn’t have made any difference anyway, in my opinion.”

I am satisfied that the deputy mayor knew that Mr. Bonwick was involved. I am also satisfied that he knew that this information would make a difference to the public’s perception of Council’s decision to construct the Sprung facilities. Mr. Houghton testified that he did not disclose Mr. Bonwick’s work for BLT when the public began asking questions because he learned from the PowerStream situation that there was no need for disclosure. He explained: “if there was no conflict of interest, then where’s the conflict of interest? So it it’s a – that was my understanding. That was – that was why I acted the way I did.” When asked why he denied there was a relationship with Sprung, he defended his response as “accurate,” testifying: “Because I’d been told that there was no relationship with Sprung. He’s working with BLT.”

I pause here to note that there had been no public mention of BLT whatsoever by this time. As far as the public knew, the Town was dealing with Sprung on the recreational facilities. Therefore, I cannot accept Mr. Houghton’s claim that his response to Mr. Berman’s question was accurate. Mr. Berman’s question was asking whether anyone profited from Council’s decision to construct the Sprung structures. Mr. Berman did not ask about BLT because Mr. Berman did not know BLT was the Town’s counterparty in the construction contract. Mr. Houghton’s response was therefore both inaccurate and misleading.

I do not accept that Mr. Houghton saw a meaningful distinction between Sprung and BLT, as he made clear in his earlier testimony. It is apparent from the emails inquiring about Mr. Bonwick’s involvement that the matter would be controversial if it was revealed.

Concealing Mr. Bonwick’s involvement risked further undermining the public’s confidence in the municipality. To the extent Mr. Houghton, or the deputy mayor, testified that Mr. Bonwick’s role with BLT presented no issues, their conduct suggests otherwise.

As will be seen, Mr. Houghton’s efforts to conceal Mr. Bonwick’s involvement continued until 2018.

Town's Response to Freedom of Information Request

On October 12, 2012, Mr. Berman submitted a Freedom of Information request to the Town of Collingwood seeking, among other things, “An accounts payable listing of all fees paid by cheque or other method to Compenso from January 1, 2011, to present (October 12, 2012).” Town Clerk Sara Almas responded on October 26, 2012, advising that the Town did not have any record of any payments to Compenso during the requested period.

Once again, the thrust of Mr. Berman's inquiries is clear – he wanted to know if anyone benefited from the two major transactions the Town undertook. The only member of Town staff who had accurate information about Mr. Bonwick's involvement was Mr. Houghton. He withheld that information.

Mayor Questioned

The day after the November 5 Council meeting, a member of the public emailed Mayor Cooper and Councillors Mike Edwards and Ian Chadwick, describing “the scoop on what Collingwood is talking about,” including “i [sic] have also heard your cousin paul bonwick was paid a substantial amount to negotiate this deal.” The email concluded: “I would especially like to hear ... whether your close relative paul bonwick benefited from this deal!”

Mayor Cooper forwarded this email to Mr. Houghton with the covering message, “Really??” Mr. Houghton replied, “Not worth a response.”

Councillor Chadwick responded to the email that evening. In response to the questions about Mr. Bonwick's involvement, Councillor Chadwick wrote: “A Freedom of Information request recently filed to the town of Collingwood turned up NO payment to Mr. Bonwick for any service. Mr. Bonwick does not do business with the municipality.”

In a further exchange of emails with the citizen, Councillor Chadwick wrote:

Paul Bonwick did not negotiate the sale for Collus. It was done through the standard request for proposal (RFP), with sealed envelopes from several interested utility companies opened by a committee of staff, Collus board and council. That group analysed the proposals and made

a recommendation to council based on an evaluation matrix. No one received a commission for the sale.

[...]

A recent Freedom of Information request asked for a list of any payments made by to [sic] Mr. Bonwick or his company by the town. There were none. The town has not paid Mr. Bonwick for any service.

The citizen responded 12 days later:

[I]t is still a widely held belief in the community that paul bonwick [sic] profited from ... the sale of collus to powersteam [sic].

in such cases, just like the sale of a house, moneys are put in an account, payments are made through this account for fees to agents, lawyers etc. these payments are said to come from the account not the buyer or seller.

will you confirm that paul bonwick in no way profited from either of these or other town deals?

The Inquiry did not receive a response to this final email, if one was delivered.

Mayor Cooper testified that she “wasn’t focussed on rumors” when asked if she had made any inquiries of her brother after receiving an email suggesting that her brother benefited from the Sprung decision. She added: “Councillor Chadwick had responded appropriately with the information, and once he had responded, I was satisfied.”

When pressed on why she didn’t simply ask her brother if he had any involvement, Mayor Cooper testified:

I’m going to guess, and say he was busy. I was busy dealing with other matters as mayor, and a county Councillor, and other responsibilities. And – as well as personal – a lot of emails coming in, having to address those. I was satisfied with the answer.

Ms. Cooper further stated that she did not know about Mr. Bonwick’s involvement when these answers were provided to the public, and agreed it would have been beneficial to know about his participation at the time.

Mr. Houghton testified that he believed Mayor Cooper knew Mr. Bonwick was working for BLT, explaining: “I felt that she knew that he was working with BLT. And if – if my assumption was correct, then there was no – you know, there would be no need for me to say he got paid because I would – actually would assume that.” When asked if he had an obligation to confirm this assumption with the mayor, Mr. Houghton responded: “If ... she has no obligation to disclose that her brother is working, why is it my obligation?” He elaborated:

[Mr. Bonwick] was working for BLT. He was being compensated by BLT, wasn't coming out of the Town – Town coffers. And if I had told Her Worship, either, a) I would have offended her, or if she would have told me she knew or didn't know, it – I don't think it would have made a ... hill of beans difference.

I accept Ms. Cooper's evidence that she did not know that her brother was working for BLT. She should have asked him. It was irresponsible for her to permit Councillor Chadwick to respond to a member of the public's questions about whether her brother profited from the recreational facilities deal without confirming the accuracy of the answers he was providing. This wilful ignorance demonstrates the mayor's misunderstanding of her role as the head of Council and guardian of the public trust.

Similarly, Mr. Houghton's conduct in permitting answers he knew were incorrect and misleading is an example of his failure to understand his obligations as the Town's acting CAO.

There was also a more insidious reality developing – each time a member of the public was falsely advised that Mr. Bonwick had not been involved in the recreational projects, the potential repercussions for Mr. Houghton, the CAO who didn't disclose the payment of Green Leaf's fee to the Town, worsened. As a result, the incentive to conceal the payment increased.

WGD Report

WGD's Concern About Staff Report

On September 7, 2012, Richard Dabrus of WGD emailed Marta Proctor:

I've been made aware of a couple of issues on how our recent work has been used in the staff report to Council on August 27th. On page 71 it states that we knew we were in competition. This statement is wrong and puts our work in a negative context, as having a vested interest.

We don't.

We need to talk about this, as it is damaging to our firm's reputation.

After Ms. Proctor forwarded the email to Mr. Houghton, Mr. Houghton responded on September 8:

Ms. Proctor has forwarded your email for me to respond. I can reassure you that in no way were you or your firm's reputation put into question. The presentation that was made by our Treasurer was very respectful of the work that was done by your firm on behalf of the Steering Committee and the work completed at the request of Mr. McNalty. I believe the word competition meant that we were looking at different types of structures and your firm was aware that we were getting prices on other types of structures and your firm provided us the estimated numbers on the steel fabricated building. It did not mean however that you were in a competitive bidding process because we well know that you were providing budget numbers or estimates as our Central Park Project architect and not firm numbers as we may have gotten from a construction contractor. I trust that you accept this explanation and I thank you for your email.

Mr. Dabrus testified that he was not aware the Town was getting other prices on other types of structures. He did not have any further interactions with Mr. Houghton or the Town.

When questioned about his response to Mr. Dabrus at the hearings,

Mr. Houghton admitted that Council was given incorrect information about the role of WGD and that describing the firm as in competition was “unfortunate wording.” He further stated that Ms. Leonard and Mr. McNalty drafted this portion of the report, but added, “I’m not blaming any of them.”

Mr. Houghton testified that Mr. Dabrus’s concern that “one little sentence” would harm WGD’s reputation was a “little bit over the top.” He also suggested it would not have affected Council’s decision.

I do not accept that this error was minor. The staff report was a public document. When the report was brought to Mr. Dabrus’s attention, he was rightfully concerned about the effect on his firm’s reputation. In terms of Council’s decision, the misrepresentation of WGD’s work – as discussed in Part Two, Chapter 11 – was used to justify a non-competitive procurement. As can be seen from the disquiet in the community and the extraordinary efforts to find out what happened, Mr. Dabrus was rightly concerned about the effect on WGD’s reputation of the misrepresentation in the staff report. The significance to WGD cannot be downplayed.

Mr. Houghton’s Attempts to Discredit WGD Report

On October 5, 2012, Joe MacDonald of the Parks, Recreation and Culture Advisory Committee emailed the committee, Marta Proctor, and Councillors Dale West and Keith Hull a copy of WGD’s report on fabric and prefabricated steel arenas, commenting: “fyi report that compares the bubble to bricks.” Councillor West forwarded Mr. MacDonald’s email to Mr. Houghton and said, “just so you know, this is being circulated ...”

Thirty minutes after receiving Councillor West’s email, Mr. Houghton sent Mr. McNalty an excerpt of WGD’s report and wrote: “[T]his is what WGD Architects said when they compared a Steel Fabricated Building to a Sprung structure. Can you help with the errors in their comments? Once again this is time sensitive.” Mr. Houghton also asked BLT for assistance.

Mr. McNalty testified that he was not aware of the errors Mr. Houghton was referencing in his email. As I discuss in Part Two, Chapter 7, when WGD first submitted its report on August 17, 2012, WGD stated that fabric buildings were not insulated, a fact Mr. McNalty advised WGD was incorrect when it came to Sprung structures. WGD revised its report accordingly and

Mr. McNalty testified that, once that issue was addressed, he did not believe anything in WGD's report was wrong or inaccurate.

When asked about Mr. Houghton's October 5 email, Mr. McNalty repeated that he was not aware of any errors in WGD's report, although he still was not certain WGD understood the energy performance of a Sprung fabric building as compared with agricultural fabric buildings.

In any event, pursuant to Mr. Houghton's direction, Mr. McNalty prepared a memorandum about the WGD report. Although the memorandum did not expressly identify errors in the WGD report, it portrayed WGD's work in an unfavourable light.

First, the memorandum discussed that WGD initially stated that fabric buildings did not have insulation, but that comment was retracted after Sprung's style of fabric building "was introduced to WGD." The memorandum continued: "Prior to our suggestion, the architects seemed quite unaware of this advanced technology available in the market, and are naturally focused on the delivery of brick and mortar, concrete and steel facilities." In suggesting WGD was disinclined to learn about Sprung structures, the memorandum did not mention that WGD was prevented from contacting Sprung. As I discuss in Part Two, Chapter 7, Deputy Mayor Lloyd directed that Mr. Houghton be the only point of contact between the Town and Sprung.

Second, the memorandum indicated that green initiatives needed to be added to WGD's pre-engineered steel estimate in order to make a "realistic" comparison between the pre-engineered steel arena and the Sprung structure, which "would be provided with that level of qualification." As I detail in Part Two, Chapter 11, Sprung structures were not inherently LEED silver equivalent, and the addition of green initiatives to the pre-engineered steel budget overinflated the staff report's price difference between the pre-engineered steel and fabric arenas.

Third, the memorandum also noted that the cost of a second-floor mezzanine needed to be added to WGD's estimate* and concluded:

The estimated cost reduction of \$500,000 for a fabric structure that WGD Architects provided at the end of their report would have been baseless

* I discuss this point also in Part Two, Chapter 11.

as it was not for an insulated architectural membrane system. It has no relevance to the comparison.

At the Inquiry, Mr. McNalty explained that, when he wrote this passage, he believed WGD still did not have a clear understanding of the features of the Sprung structure and was “still looking at the wrong type of fabric building.” When asked why he did not raise this concern with WGD, Mr. McNalty stated: “Time and effort.” He expanded that, at this point in October, “there was no immediate need to have that conversation” because this was some time after Council’s vote and “there was no need, other than a housekeeping thing to go back to WGD to clarify information.”

I am satisfied that WGD’s estimate was not baseless or irrelevant. For the reasons I detail in Part Two, Chapter 11, WGD’s estimate of the price difference was reasonable and should have been presented to Council without adjustment, along with an explanation that the inclusion of a second-floor mezzanine may affect the estimates.

Fourth, the memorandum took issue with WGD’s conclusion that a pre-engineered steel building would have better energy performance than a fabric building with similar insulation. WGD arrived at this conclusion because the aluminum frames of a Sprung structure cut through the layer of insulation in the building. Each frame, in turn, created an opportunity for heat to escape in the winter and enter the building in the summer, an effect called “thermal bridging.” In contrast, insulation is continuous in a pre-engineered steel building.

The memorandum described WGD’s concerns about thermal bridging as “cautious.” It continued that staff “had already addressed this question with Sprung, and the explanation that was provided was satisfactory.” Specifically, the memorandum stated that spacing of the aluminum frames and the addition of caps on the frames “reduce the effect of the potential bridge.” It continued that “thermal bridging does not present an issue and there have not been issues associated with this in Sprung’s experience in various climactic [*sic*] locations.” Mr. McNalty confirmed that no one from the Town shared Sprung’s explanation with WGD.

The memorandum also incorrectly suggested that energy modelling was unnecessary. As I explain in Part Two, Chapter 7, the Town initially asked

WGD to analyze the expected energy use of a fabric and pre-engineered steel arena. WGD, however, did not have enough information to complete energy modelling by the Town's deadline. In the memorandum, Mr. McNalty wrote that, while energy modelling could be performed, "a published third-party comparison, copy attached, has already been performed on actual operating facilities, which is arguably more reliable than a theoretical model." The attachment was a report prepared in April 2012 by a company called RePower Canada Inc., comparing the energy use of two worship centres: one built by Sprung with R-25 insulation, and one built with concrete block and wood framing with R-12 insulation. The memorandum continued: "The third party audit and report presents a clear advantage in favour of the insulated architectural membrane structure."

At the hearings, Mr. McNalty testified that WGD was not instructed to do energy modelling because it would be a significant undertaking "in terms of time and cost," although he confirmed he did not discuss timing or cost with WGD. He also confirmed that Sprung had provided RePower's energy report to the Town. He believed he received it before the August 27, 2012, Council meeting. In either case, the fact that WGD had been told not to complete energy modelling owing to time and cost limitations was not referenced in the staff report or raised with Council.

Mr. McNalty testified that he believed that, while a worship facility would use energy "in a different range" than an arena, the "energy performance of the structure would be the same."

I am satisfied that the energy report was not a suitable substitute for the energy modelling WGD had initially proposed. The only purpose of raising the energy modelling at this point was to attempt to undermine WGD's conclusion, unfairly and after the fact, as I discuss below.

After Mr. McNalty finalized the memorandum on October 8, Mr. Houghton forwarded it to Mayor Cooper, the Executive Management Committee, and Ron Martin, the deputy chief building official, writing:

On Friday afternoon Councillor West sent me information that was being circulated by the Friends of Central Park. The information was a report produced at our request by WGD Architects comparing a steel fabricated building to the insulated architectural membrane building. The report

is being misread mainly because the report originally was not comparing the proper structures and was revised partially by WGD. Town Staff were aware of what was and was not revised but without this knowledge one can see how this could be misleading. The following is an excellent report from Dave McNalty fully explaining the report and how it is being misinterpreted and how it should be understood.

Mr. Houghton's email attached the memorandum, the energy-modelling study, another study looking at the airtightness of a Sprung prison in England, and Mr. McNalty's spreadsheet containing the adjustments he made to the WGD estimate for pre-engineered steel.*

Mr. Houghton's covering email was misleading. Specifically, it stated that the WGD report was being misread because "it was originally not comparing the proper structures" and then suggested that, although this error was addressed, further errors persisted, which were known to staff but were not apparent on the face of the report. However, as noted in Part Two, Chapter 7, Mr. McNalty, Ms. Proctor, and Ms. Leonard testified that they were not aware of any issues with WGD's report after it was submitted.

I am satisfied the WGD report did not contain any errors or misunderstandings that left it open to misinterpretation. Similarly, I find that the memo Mr. McNalty prepared at Mr. Houghton's direction did not reflect any actual concerns that staff had with WGD's report or estimates, other than the concern that the pre-engineered steel building estimate needed to be adjusted to be comparable to BLT's budget for the Sprung arena. As I detail in Part Two, Chapter 11, although Mr. McNalty believed these adjustments were necessary, the assumptions underlying them were flawed. They artificially inflated the cost difference between Sprung and pre-engineered steel arenas.

I am satisfied Mr. Houghton directed Mr. McNalty to prepare the report to undermine WGD's credibility, not to present an honest assessment of the WGD report.

* In Part Two, Chapter 11, I discuss the adjustments in detail. As I note there, the adjustments, and how they were presented in the staff report, exaggerated the price difference between pre-engineered steel and fabric arenas by at least \$3.39 million.

If Mr. Houghton's concerns regarding the accuracy of the WGD report were genuine, he would have provided Mr. McNalty's memorandum to WGD for comment before forwarding it to the mayor. Mr. Dabrus confirmed that no one from the Town ever approached the firm about errors in its report. At the hearings, Mr. Houghton rejected the suggestion that he did not send the memorandum to WGD because he was not interested in WGD's comments, testifying that he would say "to their face today" that the report was not well done.

Mr. Houghton did not want to know what WGD had to say because the purpose of the memorandum was to create the misleading impression that the WGD report contained errors.

Mr. Houghton wanted to discredit WGD. An example of Mr. Houghton's efforts occurred a week after Mr. McNalty finalized his report. Mr. Houghton was included on an email chain involving Dr. Mike Lewin, a resident, and Councillor Chadwick. As part of the chain, Dr. Lewin wrote on October 15:

I wonder why a membrane structure was necessary. Why not a structure made of steel or bricks? The town has an architect's comparison report that states that a steel structure would be a superior choice, costing only a little more, could be built just as fast and would be more energy efficient. This is a comparison of an R-30 membrane structure to a steel clad structure. Even more troubling is that the staff report for this project seems to contradict the architectural report. Were there other neutral expert opinions that favoured a membrane structure?

Mr. Houghton replied to Dr. Lewin's email, writing: "I'm really getting tired of this man totally misrepresenting information and disrespecting everything we have done." Dr. Lewin replied, asking how he was "misrepresenting & disrespecting everything." Mr. Houghton replied:

As I explained previously, the architect's report was originally based on a fabric building with no insulation. When we spoke to them they amended a portion of the report but not the energy conservation portion nor the costs associated with that. So when you read the report it only considers a portion of the whole picture.

Ed Houghton included in his response a portion of Dave McNalty's October 8, 2012, memo, "WGD Comparison of Various Construction Options for Arena at Central Park." Mr. Houghton concluded his email by writing: "I apologize for my comments but I have tried my very best to provide the facts and the rationale for the decisions that have been made. I understand that you fundamentally disagree with those decisions but I have always felt that working in a cooperative manner is far more productive than to continue to [go] down the same path."

Dr. Lewin responded:

One of the problems for people like myself is that information has been difficult to obtain and has come out in bits and pieces. I would love to see the third-party report that is quoted in Mr. McNalty's statements. It sounds like it would be quite reassuring. However I have re-read the WGD report and still feel that there are a couple of conflicting pieces of information. I have pasted them below. The time required to build is stated to be similar and the thermal performance clearly compares a steel rink to a membrane with insulation structure. I realize you are busy. There is no urgency for these clarifications.

Public Reaction to CBC Article

Public scrutiny about the Sprung structures intensified after the CBC published an article by journalist Dave Seglins on March 8, 2013, headlined: "Collingwood mayor's brother paid by casino, power companies."* The article reported that citizens had complained to the Ontario Provincial Police about Mr. Bonwick's role in the Collus Power sale and as a lobbyist for a proposed new casino.

Although the article did not mention the Sprung structures, three days later the *Collingwood Connection*, a local newspaper, reported that approximately 130 people held a rally outside of Collingwood Town Hall. The rally

* I discuss this article as it related to the Collus Power transaction in Part One, Chapter 10.

was organized by Steve Berman, who noted that the CBC article “presented a good opportunity for the public to comment on these and other complaints towards council ... people are upset about the recreational facility and the lack of transparency.” In another *Collingwood Connection* article covering the rally, Mr. Berman noted that he believed “that the rec facility decision was made by council before it was introduced to the public” and that he organized the protest “to give people the opportunity to voice their concerns.”

The article demonstrates that the lack of disclosure, and subsequent efforts to conceal Mr. Bonwick’s involvement, led to public comment and suspicion concerning the nature of Mr. Bonwick’s influence over Council’s decision making.

When asked if he agreed that it is better for a politician to know about a potential controversy than be surprised when it is reported in the media, Mr. Bonwick replied: “Not necessarily at the time.” When pressed further why he did not specifically inform his sister about his work for BLT when he learned Mr. Berman was asking about his involvement with Sprung and BLT, Mr. Bonwick replied:

I will have to assume that, based on my assessment during that period seven (7) years ago, that I didn’t feel it would necessarily offer any value to her.

After the CBC article was published, Mr. Bonwick testified that he had engaged a lawyer and was not discussing matters related to the OPP investigation with his sister.

Mr. Houghton’s Misleading of Reporter

During Mr. Houghton’s testimony at the hearings, Mr. Seglins posted on Twitter that he interviewed Mr. Houghton on March 5, 2013.

Mr. Seglins wrote that, during the interview, Mr. Houghton stated he did not believe Mr. Bonwick was “working with BLT / Sprung,” a fact that Mr. Houghton admitted during his testimony (and was undeniable by the time the Inquiry’s Part Two hearings began). At the Inquiry, Mr. Houghton stated he did not recall speaking with Mr. Seglins, adding that it “was a very

stressful time” and that he was “not doubting what Mr. Seglins is saying or his – his integrity.”

Counsel for the Town showed Mr. Houghton a transcript of a phone conversation Mr. Seglins had with Mr. Houghton in May 2018, which the CBC had published. During the conversation, Mr. Houghton denied that BLT had anyone assist it in securing the contract with the Town. When asked specifically what Mr. Bonwick’s role was, Mr. Houghton replied: “Nothing with me” and, with respect to Green Leaf, Mr. Houghton said: “I don’t know if Green Leaf Distribution had anything to do with the Sprung deal. From the Town’s perspective I don’t know.” These statements were demonstrably untrue.

During his testimony, Houghton acknowledged he was “avoiding answering” Mr. Seglins’ questions and that the answers he did provide were incorrect. When he was asked whether he was concerned that his conversation with Mr. Seglins might have a negative affect on Collingwood’s reputation, Mr. Houghton testified: “I certainly never thought about Collingwood’s reputation. But you don’t know why I was a retired guy either.”

During his testimony, Mr. Houghton also tried to excuse his behaviour by saying:

Well, in fairness to me, I was outside doing other things when he called, and this was bringing back a whole bunch of memories that I didn't really want to think about and I'd tried to push to the back of my mind.

Mr. Houghton also said: “In 2018, when this gentleman calls me, do I have an obligation to talk to him about things that happened six years previously?”

Regardless of whether Mr. Houghton was obliged to respond at all, once he did respond, he ought not to have misled Mr. Seglins. Mr. Houghton admitted that he regretted his exchange with Mr. Seglins, noting: “I regret doing everything here.”

Mr. Seglins tweeted during the hearings that Mr. Bonwick also denied involvement in the Sprung transaction during an interview in 2013. Mr. Seglins stated that his notes read “SPRUNG: No involvement. No Compensation.” When asked if the tweet refreshed his memory about his conversation with Mr. Seglins, Mr. Bonwick stated he could not recall all they discussed:

I thought and he may have spoke about Sprung, but I didn't know for sure. I have no reason to discredit or challenge Mr. Seglins' – Seglins' statement that in fact he may have, but I would also draw yourself to the fact that at no time was I or was my company engaged with Sprung.

And semantics aside, Green Leaf never received compensation from Sprung. Green Leaf never had a contract with Sprung. Paul Bonwick never had a contract with Sprung, Paul Bonwick's companies never had contracts or received remuneration from Sprung.

And so I'm not challenging Mr. Seglins' comments related to whether he did or didn't do that. I think I also indicated that Mr. Seglins would be aware of the fact because I was somewhere outside of James Bay snowmobiling when Mr. Seglins called me and tried to conduct an interview with me, standing on the seat of a snowmobile, trying to get phone reception to answer his questions.

Mr. Bonwick continued that he could not recall whether he denied being involved with Sprung, but regardless of what he may have said, the note saying "Sprung: No involvement No compensation" was accurate because he worked for BLT, not Sprung directly.

Resignation, Appointment, and Disbandment

Scrutiny of the Sprung decision added stress to the Executive Management Committee, culminating in Mr. Houghton stepping down as acting CAO on April 15, 2013, and Clerk Almas withdrawing from the EMC at the end of May in the hopes it would finally spur Council to find a new CAO.

Mr. Houghton's Resignation

At the hearings, Mr. Houghton testified that, on multiple occasions in 2012, he urged Council to begin the process of finding a new CAO. The first record of Mr. Houghton raising the issue was during the *in camera* session of the November 5, 2012, Council meeting. The minutes recorded:

Ed Houghton reviewed the comments of recent blogs and expressed his concerns about the content, defending his position. He also advised Council of his heavy workload and commitments, suggesting Council should be looking for a CAO in the New Year and perhaps look at a strong management team and offered his assistance.

At the hearings, Mr. Houghton testified that, at this point, he was “getting extremely tired” and could not “continue to do this. I was afraid that I wouldn’t be able to ... physically be able to do it. Mentally or emotionally ... it was a lot of work.” He also said he was not accustomed to the media and public scrutiny he had faced, commenting that “there was blogs written, there was all of this. I was not accustomed to ... that social media bullying.”

Mr. Houghton testified that, prior to November 5, he “often” raised his concerns to Council during *in camera* sessions, although this is not reflected in the minutes of earlier *in camera* sessions.

Mr. Houghton further stated that he spoke directly to Mayor Cooper and the deputy mayor about his concerns. Deputy Mayor Lloyd agreed when Mr. Houghton’s counsel suggested Mr. Houghton had expressed concerns from time to time, including at Council meetings. Mr. Houghton’s counsel did not ask Ms. Cooper if she recalled any such conversations.

As I discuss in Part Two, Chapter 12, Mr. Houghton apparently raised the prospect of quitting his position as acting CAO with Deputy Mayor Lloyd and Mr. Bonwick the day before the August 27, 2012 Council meeting, although he testified that he did not quit at the time because he did not want to leave the Town “in the lurch” and he was “not a quitter.” I note in that chapter that, although Mr. Houghton may have raised job dissatisfaction on the August 26 call with the deputy mayor, I find that the majority of the call was focused on strategizing for the next day’s vote on the Sprung structures.

On January 30, 2013, Council held a special meeting. At the meeting, Clerk Almas provided a brief overview of an operational review of all the Town’s programs and services (which I discuss further in the next section). Following the presentation, and at staff’s recommendation, Council voted to direct staff to develop terms of reference for a CAO recruitment strategy. In his testimony, Mr. Houghton agreed that this resolution reflected that Council was taking his request that it find a new CAO seriously.

Progress stalled, however. On April 9, 2013, Mr. Houghton advised the Town's department heads that he would be stepping down at the April 15 Council meeting to concentrate on Collus PowerStream. Mr. Houghton testified that he decided to step down at this point because "nothing was moving forward in a sense of recruiting a new CAO," he was "overtired," and the Collus PowerStream board wanted him back full time.

As described in Part One, Chapter 10, on April 15, 2013, Ed Houghton stepped down from the role of acting CAO of the Town of Collingwood. He remained the president and CEO of Collus PowerStream until his retirement from that position in June 2016.

Two days earlier, Mayor Cooper wrote to a member of staff regarding Mr. Houghton's departure:

You are correct that Ed has not received compensation. "volunteering his time." Council has not discussed this, but he may be recognized / compensated at some point in time. It remains a sensitive [*sic*] matter at this point in time.

Mr. Houghton testified that, although he did not ask to be paid for his work as CAO, he did receive a bonus in 2013 of "Maybe twenty or thirty thousand, something like that" for his efforts.

Other than this amount, Mr. Houghton did not receive additional compensation for taking on the role of acting CAO (see Part Two, Chapter 2). He saw himself as a volunteer. In his testimony, Mr. Houghton associated his lack of compensation with his length of term:

Council wanted deliverables in this term, and they were also not big on hiring consultants and things ... And I think that I was even a party to that, where I was – I think that's why I stayed longer than I should have stayed, because I was free.

Mr. Houghton then acknowledged that, in hindsight, the CAO job was too much for him to take on.

Clerk Almas's Withdrawal from EMC

Ms. Almas testified that, after Mr. Houghton stepped down, the Executive Management Committee (EMC) was “basically just managing day to day as best we could,” although she did not believe the group had taken on the responsibilities of the CAO. Ms. Almas said she ultimately withdrew from the EMC at the end of May 2013, after several stressful months.

In an affidavit she provided to the Inquiry, Ms. Almas described working on the EMC as a “unique opportunity but very stressful at times,” continuing: “Mr. Houghton was often occupied with his other responsibilities and so Marjory Leonard and I took on many of the CAO’s duties.”

Ms. Almas expressed some of her concerns to the EMC in emails she sent on January 29, 2013. At the time, Ms. Almas was responsible for overseeing an “operational review” for the Town, which involved reviewing all the programs and services offered by the municipality. At 9:40 p.m. on January 29, the day before a special Council meeting, Ms. Almas sent the EMC a draft slide presentation about the operational review, writing: “just REALLY need input on the content and direction we are looking for! HELP!” At 10:19, she sent another email with the subject: “Next Steps! – concerns ...” Ms. Almas wrote:

If an EMT is desired – regardless the Chair would be the presumed CAO in the publics preception (and staffs) [sic]. I am not sure if I can commit more than what I am doing now! I am trying so hard to keep up with everything and cannot afford any mistakes as the Clerk and for my family (as everyone is replaceable) I really appreciate Ed’s role – as the Acting CAO it has been so important!! I am sure Ed and us all realize how important HE has been! (hence Ed’s personal and professional responsibilities being compromised) Can we discuss tomorrow ... am very sorry to bring this up now – but I feel we need to discuss before any decisions are made.

At the Inquiry, Ms. Almas explained that when she wrote this email she was “extremely busy.” In addition to her regular responsibilities as clerk and overseeing the operational review, she was also dealing with the information requests relating to the Sprung decision and discussions about potential construction of a new casino in Collingwood. Ms. Almas testified that she

felt she “didn’t have any support” and that she “was doing more than my share on the EMC than others were.”

Earlier in her testimony, Ms. Almas said that the operational review itself “wasn’t too stressful,” however, her job became “very stressful” when she began dealing with the “public outcry” from the Sprung decision. During this time, Ms. Almas described herself as the “public facing person” at Town Hall, which meant dealing with a lot of inquiries from the public.

In addition, Ms. Almas testified that she believed “she couldn’t afford to make any mistakes,” explaining:

I was the bread winner for my family as well, so I was concerned because obviously I’d just seen the termination of the previous CAO that I was shocked about at the time, and so I couldn’t risk being in a compromised position that would afford something to cause me to lose my job.

Ms. Almas stepped down from the EMC around the end of May 2013. She testified that she decided to withdraw at that point because, without a CAO, the EMC was not productive:

I felt again frustrated that I was taking on more responsibility, nothing was happening for a position of CAO, so I felt that Council would just carry on with an EMC and – and if I step down, that would hopefully spark an interest to get the process going again ... on appointing a CAO.

KPMG’s Organizational Review

During the same period that Mr. Houghton stepped down as acting CAO and Clerk Almas withdrew from the EMC, the Town hired KPMG to assist with the organizational review of all the services provided by the municipality. The first phase of KPMG’s organizational review included a CAO position profile, a proposed CAO recruitment plan, and draft terms of reference for the EMC. As I explain in Part One, Chapter 10, Bruce Peever of KPMG presented the results of the first phase to Collingwood Council on May 13, 2013.

Mr. Peever’s presentation included the following comments:

1. The Town should hire someone who has already worked as a CAO to be the next Collingwood CAO. Mr. Peever explained that, “given [the Town’s history], it would be appropriate that [the Town] would recruit someone who is a seasoned CAO”;
2. The Town should consider retaining an executive search consultant for the CAO position because these consultants are trained to make objective judgments and offer confidentiality; and
3. The members of the EMC should be Town staff. On this point, Mr. Peever stated that “The importance of having your senior management as employees of the municipality can not be understated.” Mr. Peever was also quoted as saying that “If there are two employers... the individual would have somewhat of a conflict of whose interest (that person) is representing.”

Council discussed KPMG’s review again at the May 27 Council meeting. After an *in camera* discussion about a legal opinion the Town had received on having non-employees serve on the Executive Management Committee, Council voted in the public session to receive KPMG’s phase one report; approve the report’s description of a CAO’s responsibilities; proceed with an RFP to retain a consultant to conduct a search for a new CAO; and defer the creation of EMC terms of reference until the completion of the KPMG phase two report.

As I explain in Part One, Chapter 10, Mr. Peever’s comments at the May 13 Council meeting offended Mr. Houghton, who expressed his displeasure to John Herhalt of KPMG in an email on May 31. Mr. Herhalt had advised on the Collus Power RFP, but was not involved in the KPMG operational review. Specifically, Mr. Houghton wrote:

I’m sure you are not involved but I wanted to let you know that one of your colleagues, Mr Bruce Peever, has destroyed 35 years of a good partnership between the utility and the Town of Collingwood. His actual quote in the local paper in reference to what I have personally been doing for years is “The importance of having your senior leadership being employees of the Town (not employees of Collus) can’t be understated.”

I cannot believe this and I am so saddened by this.

Regretfully Ed.

Mr. Houghton's May 31 email initiated a series of communications within KPMG and between KPMG and the Town. In one email, Oscar Poloni of KPMG reported that he had spoken with Sara Almas, who commented that Mr. Peever "was correct about the senior management team, etc. but may not have stressed the need for good paper as much as he could have."

Mr. Poloni then stated: "That said, [the Clerk's] perception is that [Mr. Peever's] message was sound but just not what Council wanted to hear and as such, Bruce is pretty much mud up there now." According to Mr. Poloni, Clerk Almas also indicated Mr. Houghton was "lined up with some of the councilors so some of this may reflect the general environment."

At the Council meeting on June 10, 2013, Mr. Peever and Mr. Poloni of KPMG made a presentation to Council and recommended that the rest of KPMG's operational review be suspended until the Town of Collingwood hired a new CAO.

John Brown's Appointment

Following the KPMG presentation at the June 10 meeting, Council held an *in camera* session involving the remaining members of the EMC. The minutes record that the EMC recommended that Council consider appointing an interim CAO. As I discuss in Part One, Chapter 10, Council hired a new acting CAO, John Brown, in July 2013.

Continued Denial of Mr. Bonwick's Involvement

After he stepped down as the Town's CAO, Mr. Houghton continued to obscure Mr. Bonwick's connection to BLT and Green Leaf.

On May 24, 2013, an email by Collingwood resident Don Gallinger was published online that stated "Paul Bonwick's Office" had advised the Pretty River Academy in May or June 2012 that Green Leaf was a distributor for Sprung Structures in Ontario. Mr. Gallinger also noted he had met with Mr. Bonwick in June to discuss a Sprung structure for Pretty River Academy.

On May 30, 2013, Councillor Joe Gardhouse emailed Mr. Houghton, asking whether the statement in the letter was accurate and whether

Mr. Bonwick was “the distributor for Sprung?” Mr. Houghton responded: “I asked the same question and the answer is no.” Later in the email thread, Mr. Gardhouse told Mr. Houghton, “this letter ... says green leaf / bonwick is a distributor for Sprung ... Is Green Leaf Bonwick?” Mr. Houghton responded: “Bonwick is not involved. Abby is Green Leaf. Talk to her and she can tell you the facts.” Again, Mr. Houghton’s response to an inquiry about Mr. Bonwick’s involvement was wrong, and he knew it. Ms. Stec also confirmed in her testimony that Mr. Houghton’s response was inaccurate.

Mr. Houghton testified that he did not inform Councillor Gardhouse of Mr. Bonwick’s involvement with Green Leaf or the commission Green Leaf earned from the Sprung transaction because he felt Mr. Gardhouse’s email was specific to Mr. Bonwick’s involvement with Green Leaf during the May and June 2012 period referred to in Mr. Gallinger’s letter. He stated that he was not sure whether Mr. Bonwick was involved with Green Leaf in May and June 2012, and he thus told Mr. Gardhouse to ask his question of Ms. Stec, who had a more thorough understanding of Green Leaf’s business.

When he was examined by counsel for the Town of Collingwood, Mr. Houghton acknowledged that, at the time of his email conversation with Mr. Gardhouse, he knew Mr. Bonwick was an owner of Green Leaf and did not disclose this fact to Mr. Gardhouse. He later described his emails to Mr. Gardhouse as “unfortunate words sent very quickly [from] somebody who’s extremely busy to somebody that I’m hugely frustrated with.” Although the email conversation began with a reference to Mr. Gallinger’s letter, Councillor Gardhouse’s questions about Mr. Bonwick’s involvement in Green Leaf were not limited to a specific period. Similarly, Mr. Houghton’s answers did not indicate he was referring only to Mr. Bonwick’s involvement in Green Leaf as at May and June 2012.

I am satisfied that Councillor Gardhouse sought general information on Mr. Bonwick’s involvement with Green Leaf and Mr. Houghton chose to withhold this information from him.

Again, setting aside whether Mr. Houghton was obligated to respond to Mr. Gardhouse (who was still a councillor, despite Mr. Houghton’s frustrations), when he did respond, he ought to have been truthful.

Mr. Houghton's approach to answering Councillor Gardhouse's questions is consistent with how he handled similar questions when he was the Town's CAO.

Before this discussion with Councillor Gardhouse, Mr. Houghton answered questions about Mr. Bonwick in ways that, in some technical form, were accurate, but were also misleading. Here, Mr. Gardhouse's question to Mr. Houghton was as direct as they come: "Is Green Leaf Bonwick?" Mr. Houghton's response was equally direct: "Bonwick was not involved." When Mr. Houghton was finally asked point blank about Mr. Bonwick's connection to Green Leaf, he answered dishonestly. This exchange indicates that, during his time as CAO, Mr. Houghton's primary motive in answering questions about Mr. Bonwick was to provide answers that would mask Mr. Bonwick's involvement in the Sprung transaction.

When Mr. Houghton was asked by Inquiry Counsel whether it was in the best interests of the Town to conceal his knowledge of Mr. Bonwick's involvement with Green Leaf from Councillor Gardhouse, he responded:

Explain to me where it's not in the best interest, and please don't – I don't have much – you now suggesting that – that my thirty-nine years, my volunteerism, and everything I've done for the Town of Collingwood is – is – is not – should – should be taken into consideration but it's not. If – if – if it impacted on the Town of Collingwood, I would agree with you. It didn't.

I disagree with Mr. Houghton's assessment. His failure to be frank with Councillor Gardhouse did have a negative impact on the interests of the Town. Mr. Bonwick's involvement in Town affairs was still an open question within the Town at the time of Mr. Gardhouse's email, and the lack of transparency on the issue of Mr. Bonwick's involvement would, when discovered, further undermine public confidence in Council's decision to construct the Sprung structures.

In his closing submissions, Mr. Houghton emphasized that, at the time of his conversations with Councillor Gardhouse, he was no longer CAO of the Town and, as a result, he "had no obligation to the Town." This submission misses the point. Councillor Gardhouse's question was reasonable.

Mr. Houghton's answer revealed that concealing Mr. Bonwick's involvement took priority over providing the Town with complete and accurate information.

Conclusion

While staff and Council grappled with the public reaction to the Sprung decision, the Town also had to oversee the construction of the recreational facilities themselves, which brought its own set of challenges.

Construction of the Sprung Structures

Shortly after the August 27, 2012 Council meeting, staff began planning for the construction of the approved arena and pool. Ron Martin, the Town's deputy chief building official, was appointed to oversee both projects. He was immediately concerned about the contract the Town had signed with BLT Construction Services Inc. because it required the Town to pay a substantial amount upfront and did not detail what, exactly, BLT was obliged to build. Fortunately, Mr. Martin was able to work co-operatively with BLT to address the risks he identified.

Construction went well at the arena. Repurposing the 40-year-old outdoor pool, however, presented challenges. The Town paid \$405,000 to upgrade the pool so it could host competitive swim meets, in addition to other unforeseen costs. Council also approved spending an additional \$550,000 to add a warm-water therapy pool.

Meanwhile, the Town surveyed the public on how to spend the proceeds of the Collus share sale (see Part One, Chapter 8). The top three responses were the redevelopment of Hume Street, a main thoroughfare in Town, enhancements to the harbour, and decreasing the Town's debt – as many of the councillors had promised when elected. On June 13, 2013, as construction of the arena and the pool was approaching completion, Council voted to allocate the Collus proceeds to these two recreational facilities.

Senior Building Official to Coordinate Construction

In September 2012, after the Town executed the contract with BLT, Ed Houghton, the acting chief administrative officer (CAO), appointed Ron Martin to act as “construction coordinator” for the Sprung arena and pool. In the hearings, Mr. Martin testified that this role was “never really defined” but involved his acting as the Town’s representative in dealings with BLT during construction.

At the time, Mr. Martin had been on staff in the Town of Collingwood for more than 35 years. A graduate in the architectural technology program at George Brown College in Toronto, he worked in architects’ offices for approximately 15 years before joining the Town. He became Collingwood’s deputy chief building official in the early 2000s, where his responsibilities involved reviewing plans, conducting site inspections, and other building department business. He also served as the project manager for several large construction projects, including the Town’s new library and fire station as well as the reconstruction of a local museum. Mr. Martin testified that, as project manager, he was involved in those projects from inception to completion, including the “initial stages of the concept” – tendering architects, engineers, and contractors, developing construction documents and drawings, and overseeing construction itself.

Mr. Martin testified he thought the Town benefited from having a single person oversee large constructions projects from beginning to end:

When you ... have a background of why are we doing this in the first place, and then following it through right to basically final occupancy, certainly, anyone would have a better understanding of ... the whole picture of the project.

With the recreational facilities projects in 2012, however, Mr. Martin did not become involved until after the Town executed the contract with BLT. On September 20, Mr. Houghton introduced Mr. Martin to Mark Watts and

Dave Barrow, the president and executive vice-president, respectively, at BLT:

This email will first introduce you to Mr. Ron Martin, Building Officer who will be acting as our construction coordinator / facilitator for the above noted projects. And secondly request that you send the drawings and designs currently prepared to Ron for his review.

Mr. Martin recalled that Mr. Houghton also asked him to attend a meeting around this time with representatives from Sprung Instant Structures Ltd. and BLT to learn about the project.

In his testimony, Mr. Martin agreed he was never given a satisfactory explanation of why someone with his experience was not involved from the outset. When asked why he believed he wasn't included, he answered:

If I could give two answers. I think the first answer would be they didn't want me, or the second probably more realistic answer would be they didn't think they needed me, or needed someone like myself on – because of the nature of the design [build] contract, or a process they were going to follow.

Mr. Martin explained that, with a design-build contract, the contractor takes on the project manager role that he had filled for the Town's other projects and takes the project "from A to Z." In this case, BLT had agreed to "take care of all ... of the tendering and the processing and hiring of consultants and ... it probably works very well in some instances, it's really a turnkey project."

When testifying as to why Mr. Martin was not involved earlier in the project, Mr. Houghton first suggested that, sometime before August 27, he spoke with Bill Plewes, the chief building official, about involving Mr. Martin. He recalled that Mr. Plewes replied that Mr. Martin was very busy and that, if Mr. Houghton wanted to involve his deputy, the building department would need to hire an additional person.

Mr. Houghton then testified that the topic was raised again at the department heads' meeting on August 28. The minutes from that meeting state:

CBO Plewes noted that the Deputy CBO is busy and getting busier as project manager for the Fire Hall. If he is to also take the responsibility of managing the construction of both approved projects (Centennial Pool and the Ice Rink) then the CBO will require an additional Building Inspector for the Department to properly function.

In characterizing this meeting as the second time the issue was raised, Mr. Houghton left the impression that he had asked Mr. Plewes about Mr. Martin at some point before the department heads' meeting and that Mr. Martin would have been involved before the August 27 Council meeting if his schedule had allowed. When pressed on this timing, however, Mr. Houghton confirmed he did not ask about Mr. Martin's availability before August 27, testifying: "There was no function for Mr. Martin to be involved in the staff report, so I did not speak to Mr. Plewes. No."

Mr. Houghton testified that Mr. Martin was not involved earlier for two reasons. First, before August 27, staff were deciding what items should be included in the recreational facilities – for instance, the number of locker rooms and seats – and Mr. Martin did not have any experience with what needed to be included in a pool and an arena. Second, in contrast to the Town's other construction projects, this project was a design-build, so Mr. Martin was not needed as manager.

Ron Martin's First Impressions

When Mr. Martin became involved in the recreational facilities, he immediately became concerned that BLT's contract left the Town vulnerable. He testified that the first thing he was asked to review was the contract with BLT. At the same time, he also received the drawings that had been prepared to create the contract price, as reflected in the introductory email Mr. Houghton sent on September 20.

Mr. Martin had several concerns. As I explain in detail in Part Two, Chapter 13, Mr. Martin believed the contract's payment schedule was very unfavourable because it required the Town to pay 25 percent of the construction price before BLT did any work. He was also concerned that the contract did not require a performance bond to protect the Town in the event BLT

could not finish the project. He had never been involved in a Town project of this size without a bond.

In addition to these items, Mr. Martin had concerns about the lack of detail in the construction drawings. The following exchange during the hearings between Mr. Martin and counsel for the Town is illuminating:

Mr. RYAN BREEDON: Okay. So, when you took over this contract did you know what it was that BLT was going to be building?

Mr. RON MARTIN: No. At that ... time, at that date, having no participation up to that date, it was kind of like whomp ... So, I had no background information. I had no – all of these discussions on what's in or what's out. I ... wasn't – so, no, it was a bit of a shock, I guess I could say.

Mr. Martin continued that the drawings he received were “preliminary” and needed to be amended. Later in his testimony, he said that the contract and drawings did not have detailed specifications about what BLT was to include in the buildings – for example, the number of lighting fixtures. He described this gap as unusual.

Moreover, Mr. Martin found it odd that the Town had not stipulated that BLT should do the site-servicing work and had, instead, accepted responsibility for site servicing and hired a separate contractor, Arnott Construction Ltd., to assist. Mr. Martin testified that, typically, “a project was the entire project,” and the decision to divide the work led to two problems. First, he testified that it created some tension over health and safety responsibilities, with BLT responsible for health and safety on its site, and Arnott responsible for the area surrounding BLT's site:

So we ended up with a bit of a situation, fortunately it didn't happen, but should someone get injured on the site, on this side of line or on this side of the line, where did the responsibility fall. And ... it got even a little more difficult because you had to go across the site work project to get to the BLT project. So there was some pretty ... tense meetings for a while about that.

Second, Mr. Martin said that coordinating utilities presented challenges. For example, BLT's electrical contractor needed to coordinate with the site-servicing electrical contractor, which was "not as smooth as you would if it was all under ... one person's responsibility" and required matters to be dealt with in real time.

Finally, Mr. Martin testified, the contract was not clear about what items BLT was responsible for completing for the contract price and what items were left for the Town. Eventually, in November 2012, more than two months after the contract was signed, Mr. Martin worked with Paul Waddell, project manager at BLT, to create a spreadsheet setting out the items BLT was required to complete under the contract. Mr. Martin circulated the final "Responsibility Matrices" on November 20. Among other items, the matrix stated that the Town was responsible for the Sprung Shield (see below). Mr. Martin testified that the shield was not included in the original contract, but the Town could add it after the fact. The lack of detail in the contract could have been quite problematic for the Town had its design-builder sought to limit its responsibilities in the interest of increasing its return.

I accept that Mr. Martin was genuinely concerned about the issues he identified in his evidence. The fact that some of the concerns never materialized does not mean they were misguided. The Town was fortunate – and Mr. Martin played a role in that good fortune.

Response to Mr. Martin's Evidence

At the hearings, Mr. Houghton called John Scott to respond to Mr. Martin's evidence about the construction contract. Mr. Houghton's testimony was interrupted to accommodate Mr. Scott's schedule. Mr. Scott testified he had spent 50 years working in design-build construction, specializing in pre-engineered steel buildings and working primarily for pre-engineered steel suppliers. He had never appeared as an expert witness before.

Before calling Mr. Scott as a witness, Mr. Houghton's counsel delivered a report that stated it was authored by Mr. Scott. According to the report, Mr. Scott was asked to review Mr. Martin's evidence and the contract between the Town and BLT. After discussing the nature of design-build projects (including payment schedules), Sprung's reputation, the appropriateness

of separating site servicing from project construction, and the prevalence of construction bonds, Mr. Scott concluded in the report that Mr. Martin's evidence showed he lacked experience with both design-build projects and recreational facilities.

During the examination by Mr. Houghton's counsel, Mr. Scott expanded on the points in his report and addressed other matters relating to design-build projects.

A significant issue arose, however, relating to the origin of Mr. Scott's report. During examination by Inquiry counsel, Mr. Scott testified he did not provide Mr. Houghton's counsel with any previous drafts of his report, no one assisted him in drafting the report, and he had never spoken with Mr. Houghton directly. Inquiry counsel informed Mr. Scott that the meta-data for the report, submitted in Microsoft Word format, stated that the author of the report was an individual named "Ed." Mr. Scott denied knowing who Ed was or that anyone named Ed had any involvement in preparing the document. He then testified that when he sent the report to Mr. Houghton's counsel, "maybe my cover page was a bit rough, and I don't know if that was modified because I lacked some computer skills." When pressed on who may have indicated that the cover page was rough, Mr. Scott testified he was "speculating."

When re-examined by Mr. Houghton's counsel, Mr. Scott testified he had "[n]o doubt" he authored the report for the Inquiry.

Mr. Scott was then questioned by counsel for the Town, who inquired how Mr. Scott came to learn about the Inquiry. Mr. Scott testified that a friend, a Collingwood businessman, asked Mr. Scott to assist the Inquiry by explaining how design-build construction worked and how it was different from conventional construction or tendering. Mr. Scott testified he believed his friend was "familiar with Paul Bonwick." Mr. Houghton later testified that he too was friends with the businessman.

When he returned to the witness stand, Mr. Houghton testified he did speak with Mr. Scott and provided some assistance in the preparation of the report. He said that, the evening before Mr. Scott's report was submitted to the Inquiry, he participated in a telephone call with Mr. Scott and Mr. Houghton's counsel at the Inquiry. Mr. Houghton was at his counsel's house. During the call, Mr. Houghton said that Mr. Scott explained he was

finding it difficult to transmit his report, so Mr. Houghton's counsel asked him to re-send it by email to Mr. Houghton. Mr. Scott sent the report in a body of an email and, according to Mr. Houghton, his counsel asked him to paste the report into a Word document and add a cover page.

In addition, Mr. Houghton testified that, at his counsel's direction, he phoned Mr. Scott and asked for a curriculum vitae. Once he received it, via the same person who introduced Mr. Scott to the Inquiry, Mr. Houghton copied and pasted the CV into the document. He insisted that his request for Mr. Scott's CV was the only conversation he had with the expert.

Mr. Houghton continued that, after adding the cover page and CV, he drove home and then received a call from his counsel. He testified that his counsel advised he had spoken to Mr. Scott and directed Mr. Houghton to remove two sentences from Mr. Scott's report related to sole sourcing. Mr. Houghton testified he understood that the sentences were removed because they "didn't have anything to do with the design build part of it."

Mr. Houghton's testimony was adjourned so that Mr. Houghton and Mr. Houghton's counsel could produce all documents relating to the production of Mr. Scott's report. The produced documents included the version of the report that Mr. Scott submitted to Mr. Houghton in the email and the version that was submitted to the Inquiry in Microsoft Word format. The following two sentences appeared in Mr. Scott's email but not in the Microsoft Word report:

The selection and negotiating with a sole source contractor may have some small risks to get the most competitive pricing available, but carefull [sic] selection of the contractor will provide many benefits that far outweigh the risk. Professionals are available to vet costing proposals and generally research is done to ensure the key suppliers and contractor are providing a competitive price.

Mr. Houghton testified that he "didn't even read it when I was asked to remove those sentences, but when I look at it and I looked at it afterwards when we were putting this information together for you, ... it's not something that I would have been terribly fussed over."

I pause here to note that the pursuit of competitive pricing, consideration

of alternative contractors, the scope of research into recreational facilities by Town staff, the extent to which BLT's budgets were professionally vetted, and Mr. Houghton's failure to negotiate with BLT were all central issues before this Inquiry.

Mr. Houghton also produced a memorandum he prepared for Mr. Scott setting out the questions and issues he wanted Mr. Scott to address in his report. One of the items in the memorandum identified different "benefits of design build." Another section listed items "[w]e need to explain," including "[p]erformance bonds are not simply an insurance policy." Mr. Houghton agreed that this memorandum was a list of explanations he wanted Mr. Scott to include in his report, commenting: "See, not knowing – I thought – I mean, obviously this is from not knowing. I thought the expert witness was our expert witness ... I accept the problem. Now I understand ..." When asked if he agreed that the memorandum served as a "paint-by-numbers guide of what's supposed to go in the report," Mr Houghton responded: "I see all the pitfalls of what ... we did here, yes."

Finally, one item in the memorandum said: "We need to understand the benefits of sole sourcing and the possible pitfalls." Mr. Scott answered this point in the two sentences quoted above, only to have them removed in the Microsoft Word version that Mr. Houghton prepared. Mr. Houghton testified he was not aware of anyone ever telling Mr. Scott not to deal with this point. Although Mr. Houghton denied this explanation, he agreed that it appeared as though Mr. Scott had been asked to opine on sole sourcing, but, when his opinion was not favourable to Mr. Houghton, it was removed from the report.

In all the circumstances, I decline to rely on Mr. Scott's report.

Changes to the Pool

The Therapeutic Pool

Until 2010, Collingwood had a recreational facility called the "Contact Centre," which housed a yoga studio, fitness room, and therapeutic pool. This warm-water pool accommodated aging residents and individuals with disabilities. Council temporarily closed the Contact Centre in September 2010

for safety concerns after a building inspection identified numerous deficiencies, and in August 2011 it voted to sell the building. After the closure, Council approved a project to build a new therapeutic pool as part of a larger wellness centre at Heritage Park. Town Treasurer Marjory Leonard testified that the project was “shelved” because the costs “came back extremely high.”

The report of the Central Park Steering Committee noted that the therapeutic pool had not been replaced, even though there was “demonstrated need from diverse demographics for access to warm water for teaching and therapeutic purposes.” The Steering Committee recommended that the Town build a new 25 metre, six-lane pool that could be used for competitive swim meets, and that the existing YMCA pool in Central Park be used for therapeutic and teaching uses.

There is no evidence that the possibility of adding a therapeutic pool to the Centennial Pool facilities in Heritage Park was examined before the August 27, 2012 meeting, when Council approved the construction of a Sprung structure to cover that facility. The idea was raised, however, at Council’s planning and development meeting on September 17. The minutes of that meeting record that Mr. Houghton advised Council he would be discussing “the potential of a therapeutic pool for the community” with Marta Proctor, director of parks, recreation and culture, “in the upcoming weeks.” Mr. Houghton and Ms. Proctor also discussed adding a therapy pool to the Sprung pool project with the YMCA on September 26.

On October 2, Council directed staff to “prepare a report on having a therapeutic pool within the new Centennial Pool development.” Ms. Proctor circulated a draft staff report on October 9 which noted that adding a therapy pool would require adjustments to the site design and dimensions of the Sprung structure. The report continued: “Sprung / BLT ... confirmed that they would include the therapeutic pool component and associated site design accommodations at their construction cost.” The report provided preliminary estimates of \$500,000 to \$550,000 for the inclusion of the therapeutic pool. Under the heading “Effect on Town Finances,” the report simply stated that “[t]he costs of the new warm water therapeutic pool tank will be included in the overall cost of the Centennial Pool project.”

Mr. Houghton circulated a revised draft of the report on October 10 to Ms. Proctor, the Town department heads, and other staff involved in the

project. He suggested that Ms. Proctor “consider that this report comes from you at PRC [Parks, Recreation and Culture] with input from EMC [Executive Management Committee] and Dave McNalty [manager, fleet, facilities and purchasing].”

Clerk Sara Almas suggested that the report include a resolution requiring Council to determine how to proceed on the therapeutic pool question, explaining, “So it is Council that chooses which option to proceed with – it is not Staff’s recommendation.” Mr. Houghton agreed: “Very good point. We’ve been taking all the bullets.” Ms. Proctor circulated a revised draft on October 11 to the Parks, Recreation and Culture Advisory Committee, the Executive Management Committee, and Mr. Houghton with the following two recommendations:

THAT Council receive for information Staff Report PRC-2012-22 outlining an option to have a therapeutic pool within the new Centennial Pool development.

Or alternatively;

THAT Council receive Staff Report PRC 2012-22 and direct staff to proceed with incorporating a therapeutic pool within the current contract for the enclosed Centennial Pool development to an upset limit of \$550,000 (*excluding applicable taxes*).

At the hearings, Ms. Almas explained that, “since there was so much controversy” about the recommendation from the Executive Management Committee to sole source the Sprung facilities, the decision about the therapy pool “truly [needed] to be a Council decision.” She added that she “wasn’t about to put forward another staff report that made a recommendation that I wasn’t supportive of. Well, I shouldn’t say not supportive; that I didn’t have full information on it. I thought it was a Council, political decision to be making.” Ms. Almas explained further:

I didn’t want to be put in another compromised position. I have a position of authority and respect in the community, and I didn’t want to be ... associated with more ... controversy, more questionable actions, I guess.

The staff report was delivered to Council and placed on the agenda for the October 15 Council meeting. The agenda set out the resolutions Ms. Almas had suggested, but the final staff report, titled Therapeutic Pool Option – Centennial Pool, contained a different set of recommendations:

THAT Council receive for information staff report PRC 2012-22 outlining an option to have a therapeutic pool within the new Centennial Pool development

AND FURTHER THAT Council direct staff to proceed with confirming detailed specifications and firm costs to an upset limit of \$550,000 (excluding applicable taxes).

The staff report explained:

Recent discussions with various community stakeholders on the approved Centennial Pool project emphasised the need and value of a warm water therapeutic pool component. Support for this feature was also presented in several previous Parks, Recreation and Culture reports including the Central Park Redevelopment Final Report, the Heritage Park Retrofit Plan and the 2008 Leisure Services Master Plan ...

Based on Council's direction, follow up discussions with Sprung / BLT have confirmed that adding a warm water therapeutic pool tank to the Centennial Pool project is a viable option. To accommodate the therapeutic pool component the site design and dimensions would need to be adjusted[;] however[,] no impact to existing park uses is anticipated. The proposed therapeutic pool tank would be approx 25ft by 30ft with a constant depth of approximately 4 ft.

In addition, the report addressed the cost of the therapeutic pool:

Sprung / BLT continue to express a great level of interest in building this facility as a showcase for the Ontario / Eastern Canada marketplace. As a result, they have confirmed that they would include the therapeutic pool component and associated site design accommodations at their construction cost. Preliminary discussions have identified this cost in

the range of \$500,000 to \$550,000. In order to incorporate the therapeutic pool in the construction schedule of this project, Council direction is required as soon as possible.

On October 15, Council directed Town staff “to proceed with incorporating a therapeutic pool within the current contract for the enclosed Centennial Pool development to an upset limit of \$550,000 (excluding applicable taxes).”

Mr. Houghton testified that BLT received three quotes from therapeutic pool experts and went with the lowest bid. In his testimony, Mr. Martin stated that adding the therapy pool was “almost like a total separate project incorporated in the original project.” It required making the Sprung building larger and installing separate equipment for the warm-water pool.

Competitive Upgrades to Centennial Pool

After the Town signed its agreement with BLT, the Collingwood Clippers swim club advised staff and councillors that the outdoor pool did not meet the international requirements for competitive swim meets. The club requested that the pool be upgraded, by enlarging the pool tank, expanding the pool deck, installing accessories such as a pace clock, timing system, scoreboard, touch pads, and starter blocks, and other items.

The Clippers addressed Council at its meeting on November 5, 2012. Their slide presentation stated that, without a competitive pool, the club could not grow and the Town could not host or derive revenue from competitive swim meets. The presentation also discussed funding opportunities, including a grant application the club had made and possible public-private partnership opportunities.

Around the same time, an anonymous donor promised to contribute \$150,000 to the costs of upgrading the pool. In December, the Town and the donor agreed to give BLT \$10,000 from the donation to hire a pool consultant to analyze the pool, make recommendations on what needed upgrading, and assist BLT in preparing tender documents for a request for quotations (RFQ) from pool contractors. BLT agreed to return the \$10,000 if Council decided to proceed with the upgrades after reviewing the bids.

BLT issued an RFQ and reported the results to the Town on January 23, 2013.

Staff presented the results of the RFQ to Council in a staff report at the February 13 Council meeting. The lowest bid was \$583,000. The staff report stated that, in addition to the \$150,000 anonymous donation, the Clippers had committed to donate \$28,000 toward the upgrades. The remaining cost to the Town would be \$405,000, which the report stated could be funded through debenture, the Collus share-sale proceeds, internal borrowing, or any combination thereof. Council voted to proceed with the upgrades and, on February 19, BLT submitted a corresponding change order for \$583,976.

Mr. Martin testified that the competitive upgrade request “came a little bit late in the process, because we had already basically [*sic*] were under construction.” He recalled that it was a “big job” to assess the pool, determine what upgrades would be required, and implement the upgrades. Mr. Martin noted that, if upgrading the pool had been raised before the signing of the construction contract, it may have affected staff’s decision to cover Centennial Pool, as opposed to purchasing an entirely new facility.

At least, the Town could take some comfort that the price paid for the upgrades and therapy pool were obtained through a competitive process.

LEED Certification Is Investigated, Then Abandoned

In November 2012, two months after the Town signed its agreement with BLT and after preparations for construction had begun, Abby Stec, president of Green Leaf Distribution Inc.,* proposed that the Yolles Group, an engineering consulting firm, be retained to complete a feasibility study into whether the arena and pool could achieve LEED (leadership in energy and environmental design) certification. On November 12, Ms. Stec sent Mr. Houghton, as well as Mark Watts and Paul Waddell of BLT, details about the proposed study. She advised that the work would take approximately six weeks. She also noted:

* As I describe in Part Two, Chapter 6, Paul Bonwick was Green Leaf’s majority owner.

It is important to understand that the feasibility study may conclude that the pursuit of a LEED rating is not possible in the current project circumstances. This is especially important to for the pool [*sic*] which has already started work and has a very limited scope of mechanical / electrical upgrades. Yolles is more than happy to complete the analysis and make recommendations on changes that are required but may be not possible on this particular project. I believe it is in everyone's best interest to do so.

Mr. Waddell forwarded Ms. Stec's email to Mr. Barrow and Mr. Watts, expressing concerns about the extra costs and delays of pursuing LEED certification:

[O]nce "they" are involved beyond this report, all shop drawing review grinds to a complete halt as it has to go to Abby, Yolles for review and certification, and then to our consultants (and the first 2 charge additional fees each time). The process will most definitely delay us and the cost is nowhere near 1% of \$7M even with LEED shadow. The additional certification consulting fees alone would be double that ...

Mr. Barrow responded:

I say we award full steam ahead and forget the Leed other than it itself being a shadow in the background. I agree 1% is a joke 10% maybe. Deal with the extras if Ed decides we move forward.

Though she could not recall the date, Ms. Stec testified that she also attended a meeting with Mr. Watts and Mr. Houghton where both men stated that the feasibility study would be a "good thing to move forward with." Mr. Houghton authorized her to proceed with the study.

On November 20, Ms. Stec sent Mr. Watts, Mr. Barrow, and Mr. Waddell an email, copying a Yolles employee, advising that she had received hard copies of the purchase orders for the feasibility study. In her testimony, Ms. Stec stated that the feasibility study was essentially an "energy modeling" report that determined whether there would be any benefit to pursuing LEED status for the Sprung structures.

Although she could not recall when Yolles completed the study, she recalled that they concluded:

[T]he pool would not have generated any ... long-term operational cost benefits and it was ... determined, I believe, that ... the arena would ... be minimal, so that it wasn't ... worth going forward with the ... whole LEED certification.

Ms. Stec could not remember what the study concluded regarding whether it was possible for the Sprung structures to obtain LEED certification.

Mr. Barrow, who also could not recall when the study had been completed, testified that Yolles determined that the Sprung structures were “10 or 12 points away” from achieving “the basic” LEED certification, which is one level below LEED silver certification. Elsewhere in his testimony, Mr. Barrow noted that the study determined that the Collingwood structures were “fairly far off” from basic LEED certification and that it “would have taken a lot of time and money to get to a [LEED] certification level.”

According to Ms. Stec, after the study was completed, she provided the report to Mr. Houghton, who decided that he did not want to pursue LEED certification for the Sprung structures. Mr. Barrow had a similar recollection. A copy of the report was not provided to the Inquiry.

Multiple witnesses at the Inquiry testified that the pursuit of LEED certification was a matter that was best considered before the construction contract was signed and the erection of the Sprung structures began.

When Mr. Martin was asked whether it was possible to pursue LEED certification for a structure after construction begins, he stated:

I don't know how you'd do it after the fact ... all of those decisions are made very early on in the process before you even really do the drawings, before you even do the design ... you have to ... make those decisions really early in ... the process.

Mr. Martin further testified that the construction contract between BLT and the Town did not contemplate that the Sprung structures would be built to any sort of LEED standards. He stated that, if LEED certification was going to

be considered, it needed to be done “back before the projects were costed” so that the expense of pursuing LEED status “would have a dollar value attached.”

Tom Lloyd, regional sales manager for Sprung, similarly testified that, if the Town was planning to pursue LEED certification, BLT should have been told of these plans in advance. Ms. Stec agreed, testifying that it “can end up costing more” if LEED certification is not implemented during the planning stages. Mr. Barrow testified that, by the time Yolles completed its LEED feasibility study, pursuing certification was still possible, but would have required “re-engineering” certain elements of the project.

As I describe in Part Two, Chapter 11, the August 27 staff report advised Council that the Sprung structures had the LEED requirements built into their design. Mr. Houghton made a similar statement when he presented to Council that same day. Council was not advised that additional costs would be incurred to achieve LEED requirements and, if that was something it wished to pursue, it was best to do so at the outset of the project. In this regard, Mr. Martin testified: “I would think – [the pursuit of LEED certification] would be presented to Council in some way and say, okay, you want this, or you want to pay for this?”

The Construction Process

Mr. Martin testified that construction of the arena “went well” and the building “went up smooth” because “it was a clean site, easy to work on, relatively straightforward building.” In contrast, he stated, the construction of the pool went “[n]ot so well actually.”

It almost seemed every meeting there would be a new problem, a new piece of equipment, a new concrete slab, a ... new batch of piping that we couldn't reuse.

So it was almost on a weekly basis that we had to re-analyse and regroup and redesign and figure okay, how are we going to put all this together.

The difference, Mr. Martin explained, was that with the pool, BLT had to deal

with a “an existing pool, existing equipment, existing underground services, a little more problematic site.” Mr. Martin testified that he was not aware whether the site had been assessed before he was involved and, after his involvement, the only assessment done was on the pool’s tub to ensure it was structurally stable.

On April 29, 2013, Mr. Martin spoke to Council about the ongoing construction of the pool and arena. In response to a question from Councilor Keith Hull, he explained the unforeseen costs that had been incurred. He said the “major two items” were the therapy pool and the upgrades to the existing pool (as I discuss above). Their combined costs were \$955,000, excluding the contributions received for the pool upgrades. He also identified other unforeseen costs, including

- \$63,507 for soil removal for the pool. Mr. Martin explained: “[W]hen we increased the size of the building to the south, we had to excavate some of the old earth that had probably been put there in 1967 when the original pool was excavated, and we had a third party engineer come and it was deemed incapable of supporting the weight of the building. So, we had to remove that soil, bring in new soil, compact it under the supervision of a soils engineer.”
- \$14,926 for new piping in the pool. Mr. Martin explained: “We didn’t realize, nor anybody did, that the actual piping that came out of the old equipment room actually went to the east, then ran north, and then ran back under the pool. And when it was an outside pool, it didn’t really matter, but when we built the new building, our piping was outside the building ... and it wasn’t in great shape anyway.”

Mr. Martin testified that even if the piping had run in the right direction, some of it was “completely shot” and required replacement. He added that one of the reasons they did not know about the piping directions was that the Town did not have drawings showing how the pool was built in 1967.

When asked if would be better to just start over with a new pool, Mr. Martin testified:

I think it was well-intentioned, the concept was good, I think had everybody been given the time to really do ... an in-depth analysis of what we were dealing with there, that might have been the conclusion that perhaps it would be better to.

But ... you know, I wasn't part of that team. I hate to be the Monday morning quarterback here and ... say I might have made a different decision, because maybe I wouldn't have. But had that analysis been done, perhaps the result might have been lets [sic] just build a new pool. Similar to the arena, on a clean site.

By the end of the project, BLT submitted 17 change orders for the pool and arena, totalling \$1,516,383 (including HST).

Break-in at the Pool

On July 12, 2013, vandals cut a hole into the fabric building and drove a scissor lift into the pool. Construction was still in progress, so BLT had possession of the site and was responsible for the damage.

Nevertheless, the day after the break-in, Councillor Ian Chadwick emailed Mayor Sandra Cooper, Deputy Mayor Rick Lloyd, and staff about it:

In the presentations on the fabric buildings, in 2012, we were told that they had an 8 foot aluminum shield around their base. This was said a few times and the impregnability was one of the reasons I considered the buildings suitable.

I learned, Friday, that they don't have the shield. I don't recall a single discussion on not installing what were were [sic] told would be integral.

Mr. Lloyd forwarded Mr. Chadwick's email to Ed Houghton, who replied: "No idea what he is talking about. At the time I never knew about the Sprung shield until after." Later, Mr. Houghton wrote:

Tell him to stop talking about it or we will all look stupid. We have the good membrane. We chose not to spend the money on the other

because they can break into any building. The Sprung shield is just a barrier not a guarantee.

Mr. Lloyd then responded to Mr. Chadwick, saying, among other things: "... we have the good membrane and even with the sprung shield [*sic*] it doesn't make the structure impermeable." In return, Mr. Chadwick replied that his point was that Council had been told the shield was a feature that would protect the facilities, and it was not installed. He wanted to know who made the decision and why.

Councillor Hull also inquired why the shield had not been installed. In response, Mr. Houghton wrote that the shield was discussed at the July 27, 2012, meeting with Sprung and BLT. He wrote that Mr. Lloyd was at the meeting and that "I made the decision that there was no need for the additional cost of the Sprung Shield."

On July 22, 2013, Ron Martin emailed Dave Barrow and inquired why the aluminium shield had not been included in the project. Mr. Barrow replied at 1:04 p.m. that BLT had discussed the matter at a meeting with Ed Houghton, Marjory Leonard, and Larry Irwin "way back before the building was being erected." He added that "the cost was too high and they said vandalism was very low and did not think it an issue." Mr. Barrow continued that BLT "suggested doing the requirements in behind the fabric in case you wanted later but it was just not in the budget." He added that BLT could still install the shield, but it would be "very costly" since the building was now finished.

Mr. Martin forwarded Mr. Barrow's response to the individuals who had been members of the former Executive Management Committee, including Mr. Houghton, and asked if they agreed with Mr. Barrow's comments. Rather than respond to Mr. Martin, Mr. Houghton emailed Mr. Barrow, writing that the group that discussed the shield "was much larger than you suggested." Mr. Houghton then identified reasons why the Town did not include the shield, including that the membrane "was very robust in itself and that anyone wanting to cut into it would certainly have to work at it," that "anyone wishing into the building has other opportunities including the glass doors," and that "any building can be broken into." He continued:

The discussion then went to the cost, which was substantial, then to the amount of vandalism expected, which we felt was less and finally that it can be installed after the fact if vandalism proved to be an issue. I don't recall that it was going to be significantly more after the fact as you have noted.

I'm hoping that you remember my points and you revise your comments since this will be an issue.

At 5:17 p.m., Mr. Barrow sent a second response to Mr. Martin, this time including the points that Mr. Houghton had identified. Mr. Martin testified he was not aware that Mr. Houghton had emailed Mr. Barrow and did not recall receiving two responses from Mr. Barrow.

At the February 3, 2014, Council meeting, Marta Proctor presented Staff Report PRC2014-01, "Sprung Facilities – Shield Insurance and Security Update." It stated that the Sprung Shield, if it had been included at the time of construction, would have cost \$180,000. However, a "decision was made not to include this optional feature." The report continued that the estimated cost of adding the shield as a retrofit to both structures would cost an estimated \$352,008.

Allocation of the Collus Proceeds

When the Town announced it was seeking to sell 50 percent of Collus Power in November 2011 (see Part One, Chapter 5), it committed to consult the public on how to use the proceeds. The press release about the sale stated that the proceeds would be put into a special reserve account so that residents had "ample opportunity for input on the use of these funds."

As I discuss in Part Two, Chapter 3, Treasurer Marjory Leonard identified the share sale proceeds as a potential source of funding for new recreational facilities before Council's June 11, 2012, strategic planning workshop. The August 27 staff report recommending that Council sole source the arena and pool also identified that \$8,000,000 was available from the share sale, but noted "to be confirmed by public." At the August 27 Council meeting, Ms. Leonard reminded Council that it "did promise or pledge to the public that there would be discussions before we would use those funds for any capital items."

Clerk Sara Almas was responsible for overseeing the public consultation process. Council held a special meeting on December 1, 2012, to solicit input from the public about the use and allocation of the proceeds. At this meeting, Ms. Leonard presented four options for the Collus funds:

1. Pay down debt – cautioned that accelerating debt repayment would not be fiscally responsible as it would trigger penalties to the municipality.
2. Establish a legacy fund which would permit self financing of projects as recommended by Department Heads and re -pay with interest.
3. Invest a portion of the funds in the new recreation facilities and the balance into a legacy fund.
4. Allocate the funds to the following major projects: Hume Street rebuild; Sunset Point redevelopment; Harbour Redevelopment.

The minutes recorded that the attendees also presented further suggestions, including building additional recreational facilities (“namely a gym and a pool”), funding a performing arts centre, and investing in infrastructure.

During the meeting, Council was asked how its decisions regarding the allocation of the funds would be communicated to the public. Ms. Almas responded that all comments, including presentations and the minutes of the meeting, would be provided to Council and the public through the standard protocols, and that Council would decide on the use of these funds in an open meeting.

After the meeting, the Town distributed a public survey that identified several options for the Collus funds, including “[i]nvest in the new recreation facilities,” and left space for additional suggestions, comments, or explanations.

Ms. Leonard presented the results of the survey in a staff report that Council received at its February 25, 2013, meeting. The top three responses were the redevelopment of Hume Street, enhancements to the harbour, and decreasing the Town’s debt. Ms. Almas testified that Council was not bound by the survey results, but they would form part of the decision-making process.

The staff report also stated that the Collus funds totalled \$14,458,559, divided as follows:

Promissory Note	\$1,710,170
Cash Dividend	\$11,598,389
Funds held in Escrow	\$1,000,000
Future Dividend	\$150,000
Total	\$14,458,559

In respect of paying down the Town's debt, the staff report stated that the Town could repay only one debenture at its discretion. The cost of doing so would be \$12,639,610, including an estimated \$1,585,521 penalty for early repayment. The report also discussed using the funds to pay for the new arena and pool or other recreational amenities. It recommended that Council receive the staff report and, during the upcoming budget discussions, deliberate the use of the Collus funds. Council voted to follow the recommendation.

The minutes record that Councillor Hull brought a motion, seconded by Councillor Joe Gardhouse, that the proceeds from the Collus sale be held in an interest-bearing account until the Town identified a minimum of three strategic opportunities for the use of the proceeds on behalf of the taxpayers; a staff report was prepared for each opportunity, outlining the economic and social benefits and the financial investment of each opportunity; and further public dialogue was held to engage citizens for their input and comments on the opportunities. The motion was defeated.

On June 10, 2013, Council voted to allocate the Collus funds toward the recreational facilities and transfer any remaining funds to a reserve fund for the Hume Street redevelopment. The motion to allocate the proceeds was not included in the agenda among the motions Council would consider. Rather, it was listed under "older deferred business." Before Council considered the motion to allocate the funds, it voted to waive a procedural requirement that Council provide advance notice of its intention to consider a motion.

Ms. Almas testified that she had concerns about the way in which Council made its final decision. She noted that Council had not discussed the funds between the February 25 meeting and the June 10 meeting. She further stated that, as a result of the allocation motion being listed as "older deferred business" on the agenda, Council did not have either a list of allocation options before them or the staff report that had been presented at the

February 25 meeting. In addition, Ms. Almas expressed disappointment in Council's decision to waive the notice requirement:

I think I thought it was quite quick. Like, was there a reason why they couldn't have provide [sic] the notice, someone said this has been in older deferred business for this long, I would like to make a recommendation for the next meeting that we allocate it to these three – or two things, three things. And then make that ... come forward at the next Council meeting.

When asked why Council decided to waive the notice requirement and vote on the allocation of the funds at the June 10 meeting, Mayor Cooper testified: "That was a decision that Council had made, and Council wanted to move forward in that direction." Ms. Cooper said she was not aware of anything preventing Council from deferring the decision so it could provide notice.

Deputy Mayor Lloyd testified that Council waived the notice requirements "[j]ust to move forward."

The Facilities Open

The renovated Centennial Pool officially opened to the public on August 27, 2013, exactly a year after Council voted to proceed with the Sprung structures. The Central Park Arena had a "soft opening" on October 14, 2013.

On January 14, 2014, Mr. Waddell sent Mr. Martin a list of "Upgrades and Changes" for the arena that totalled \$378,780, including items such as "Center hung scoreboard" and "Increase in seating from 250 to nearly 400 seats." In the covering email, Mr. Waddell wrote: "I feel we've installed a more than premium facility and gone beyond what we initially imagined for this project."

Mr. Martin testified that Mr. Waddell sent this email as part of the negotiations about the release of the holdback amount – the final payment from which the Town could deduct for any deficiencies in BLT's work. Mr. Martin explained that Mr. Waddell was listing some of the items that BLT had

included in the project which were not cited in the contract. “[H]e’s saying look, we did all these extra things, you should forget about the deficiencies and give us ... our money.”

Mr. Martin spoke positively about BLT, stating that “all during the project” BLT was “good to work with ... I mean, they truly were, I’m not going to sit here and say anything different.” He also noted that BLT has people “from all over come and look at that arena ... as a marketing, basically, product.” “[O]bviously they want us, the Town to be satisfied clients and hopefully they can get more work from future clients,” he continued. “I think it was as simple as that really.”

In an affidavit, Mel Milanovic, the Town’s manager of recreational facilities since 2016, confirmed that the Town regularly receives requests from Sprung and BLT to host tours of the arena and the pool, and he accommodates them as often as he can.

Mr. Milanovic’s affidavit also discussed a series of repairs to the pool facilities, totalling \$360,518, that the Town had undertaken since 2016. The repairs had been the subject of a staff report that the Department of Parks, Recreation and Culture had delivered to Council on September 16, 2019, five days after the Inquiry’s Part Two hearings began. The report requested an additional \$32,500 for an ongoing repair to change-room tiles, for which Council had already approved a budget of \$144,970. The report also included a list of unplanned expenditures for the pool, including the tile replacement (Figure 15.1).

AMENDMENTS

During an update to the Corporate and Community Services Standing Committee, it was requested that a total value of all unplanned expenditures at the CAC be shared along with this report:

2016 Warm Water Pool Tiles (mould found behind rubber liner)	= \$82,986
2017 Lobby Floor epoxy finish to replace rubber tile (tiles were peeling)	= \$9,328
2017 Main Pool perimeter deck tiles (to meet Building Code)	= \$62,115
2018 Warm Water Pool perimeter deck tile (to meet Building Code)	= \$50,771
2019 Change Room partitions	= 10,348
2019 Change Room tile replacement (per this report)	= <u>\$144,970</u>

Total = \$360,518

Figure 15.1: Unplanned Expenditures for the Pool

Note: CAC is the abbreviation for the Centennial Aquatics Centre.

Source: Exhibit A to Affidavit of Mel Milanovic, sworn October 15, 2019.

In his affidavit, Mr. Milanovic stated the pool had been closed since September 1, 2019, for the tile replacement. He said that, about a year and a half earlier, staff began noticing “hollow spots” in the change-room tile floors, which had been installed during the pool’s construction. Staff also observed issues with water migration. During a renovation to a change room in September 2018, some tiling was removed and staff discovered that the drains were not at the lowest points in the floor. That problem, as well as other issues, led the Town to decide to replace the tiles and add more drains to improve drainage.

On September 5, six days before the Part Two hearings began, Mr. Milanovic emailed Sprung and BLT about the repairs. He enclosed photos of the tiles and wrote:

Not sure who you used to set the tiles, but the quality of workmanship is very poor as you can see in the pictures below. Wrong materials were used, there was no waterproofing, adhesives were incorrect, floors were not sloped at all toward the drains, the type of tile is not correct for this application and not enough floor drains were installed for these areas.

Our facilities are your flag ship buildings when it comes to arenas and pools. The groups that I tour through these facilities or that call to enquire about them are asking about the quality of workmanship and the longevity of materials used. I think you need to take a long, hard look at what went on here.

Tom Lloyd of Sprung responded: “I spoke to BLT and they are looking into this. As you know the Collingwood Inquiry is starting next week so timing is not great.” In his testimony, he stated that this email was the first time he had heard of the tiling issue. He also agreed with Mr. Milanovic’s statement that the pool and the arena were BLT’s flagship buildings for arenas and pools, “given that we haven’t built many more,” and that staff “[q]uite often” provide tours of the arena and pool.

In response to Mr. Milanovic’s email, Mr. Barrow wrote:

Even though the warrantee period is over I would like to see if you would like me to send someone to review the tile work? This is the first time

hearing you are changing the tile and we were not aware that there was an issue before this email. I would have liked to have been told so we could see what we could have done to help you. The workmanship would be easier to point out if it was still laid to get the trade involved.

Mr. Barrow also agreed that the pool and the arena were BLT's flagship buildings for arenas and pools. He testified he was shocked when he read the email because he had not heard about any problems with the pool.

At the hearings, Paul Bonwick asked several witnesses to comment on the quality of the arena and the pool and the value the Town received. They all gave positive reviews. It is beyond the Inquiry's scope to assess the quality of these recreational facilities. The question may also be premature: as the Town noted in its submissions, "only time will tell whether the Sprung structures were a sensible solution."

Conclusion

When the process is not transparent, when the facts have been spun, courses of action can be fairly questioned. Public trust in the integrity of the Town's decision making is easy to lose. When public trust is lost, the road back can be long and hard. It is impossible to say what Council would have done had there been a competitive process, or what would have occurred if BLT had not retained Mr. Bonwick. What can be said is that the decision to sole source the recreational facilities was compromised by the process that led to the decision, the undisclosed payments to Mr. Bonwick's company Green Leaf, and the misleading statements to cover them up.

